

Pain Clinics
+ Pharmacies

ORDINANCE NO. 10-027

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF BOYNTON BEACH, BY ADDING A DEFINITION FOR "~~PHARMACY AND DRUG STORE~~" TO CHAPTER 1, ARTICLE II; BY AMENDING CHAPTER 2, SECTIONS 6.A.1.I AND 6.B.1.NN BY ADDING REFERENCES TO THE REQUIREMENTS OF NEW SUBSECTION 11.S; AND BY ADDING THE NEW SUBSECTION 11.S, "PHARMACIES AND DRUG STORES" AND CORRESPONDING REGULATIONS TO CHAPTER 2; TO PROVIDE FOR CLARIFICATION REGARDING THE APPLICABILITY OF CERTAIN STATE STATUTES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City Commission of the City of Boynton Beach (the "City Commission") is authorized and required to protect the public health, safety and welfare of its citizens; and

WHEREAS, the City Commission has the power and authority to enact regulations pertaining to land use and development within the City and for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, at the Florida Board of Medicine (the "Board") Meeting in December, 2008 at Tampa, Florida, the Board cited that "an average of 7 patients a day are reported as dying of prescription drug overdose in Florida, a number that far exceeds the number dying from illegal drug use," and concluded "there may be a need to develop rules and regulations for these clinics to provide oversight related to evaluation and follow up of these difficult patients and help physicians identify persons not seeking care but just pill shopping for narcotics;" and

WHEREAS, the U. S. Department of Health and Human Services has released data showing prescription drug deaths are now the fourth leading cause of death in the United States; and

WHEREAS, the Florida Legislature has attempted to deter such drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, the City Commission has determined that a possible solution to curtail the fraudulent sales of Schedule II Controlled Substances as listed in Florida Statute §893.03 is to limit the percentage of Schedule II Controlled Substances sold in relation to the number

1 of other prescriptions sold at each pharmacy in the City within a 30 day period to be
2 determined by audits through by the Florida Department of Health; and
3

4 **WHEREAS**, the City staff is recommending amendments to the Land Development
5 Regulations limiting the percentage of such controlled substances in relation to other
6 prescriptions sold at pharmacies and drug stores in the City of Boynton Beach; and

7 **WHEREAS**, the City Commission has considered staff's recommendations and
8 reports and determines and finds that it would be appropriate to amend the Land Development
9 Regulations to reflect these amendments; and

10
11 **WHEREAS**, the City Commission finds that the adoption of this ordinance is in the
12 best interest of the health, safety, and welfare of the citizens and residents of the City of
13 Boynton Beach.

14
15 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
16 **THE CITY OF BOYNTON BEACH, FLORIDA, AS FOLLOWS:**
17

18 Section 1. That the recitations set forth above are incorporated herein.
19

20 Section 2. That Chapter 1, Article II. "*Definitions*" of the Land Development
21 Regulations of the City of Boynton Beach is amended by adding the new terms and
22 corresponding definitions to read as follows:

23 **PHARMACY AND DRUG STORE**— A "pharmacy" is an establishment primarily
24 engaged in retailing a variety of prescription and nonprescription drugs and medicines, and
25 medical and surgical supplies. A "drug store" ~~DRUG STORE~~ would be an establishment that
26 combines a "pharmacy" with the sale of products typically associated with a convenience
27 store, and provides services such as photo processing or basic health assessment (e.g.,
28 vaccinations, minor examinations, etc.). See Chapter 2, Zoning, Section 11.S for specific
29 regulations applicable to pharmacies or drugstores.

30 Section 3. That Chapter 2, Section 6.A.1, item "i" is amended to include a
31 reference to the new corresponding requirements within Section 11.S to read as follows:

32
33 i. Pharmacies, medical and surgical supplies; orthopedic, invalid and
34 convalescent supplies; eyeglasses and hearing aids (see Section 11.S for additional applicable
35 standards).

36
37 Section 4. That Chapter 2, Sections 6.B.1, item "nn" is amended to include a
38 reference to the new corresponding requirements within Section 11.S to read as follows:

39
40 nn. Drug Stores (see Section 11.S for additional applicable standards).

41
42 Section 5. That Chapter 2, Section 11. *Supplemental Regulations* of the Land
43 Development Regulations of the City of Boynton Beach is amended by adding the new
44 Subsection "S", "Pharmacies/Drug Stores" to read as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

S. PHARMACIES AND DRUG STORES:

1. Purpose and Intent. See above under Section 11.R., MEDICAL, PROFESSIONAL AND BUSINESS OFFICES AND CLINICS.

2. Applicability. This Section applies to all pharmacies and drug stores. Such uses shall be subject to the following:

a. No more than 15% of the total number of prescriptions sold within a thirty (30) day period can be derived from the sale of Schedule II controlled substances as listed in Florida Statute 893.03. All pharmacies and drug stores shall be staffed by a state licensed pharmacist who shall be present during all hours the pharmacy, or pharmacy function of the drug store, is open for business. This restriction on prescription sales shall not apply to a pharmacy operating accessory to a facility licensed pursuant to FS Chapter 395 (e.g. hospital).

3. Enforcement. See above under Section 11.R., MEDICAL, PROFESSIONAL AND BUSINESS OFFICES AND CLINICS.

Section 6. Each and every other provision of the Land Development Regulations not herein specifically amended herein, shall remain in full force and effect as originally adopted.

Section 7. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this ordinance as a whole or part thereof other than the part declared to be invalid.

Section 8. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 9. Authority is hereby given to codify this ordinance.

Section 10. That this ordinance shall become effective immediately upon its passage on second and final reading.

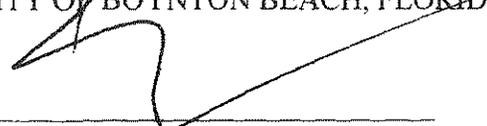
{REMAINDER INTENTIONALLY LEFT BLANK}

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

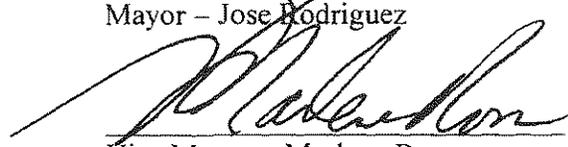
FIRST READING this 19th day of OCTOBER, 2010.

SECOND, FINAL READING AND PASSAGE this 3rd day of November,
2010.

CITY OF BOYNTON BEACH, FLORIDA



Mayor – Jose Rodriguez

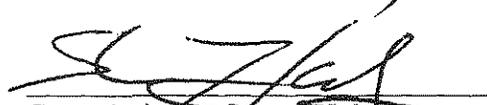


Vice Mayor – Marlene Ross

Commissioner – William Orlove

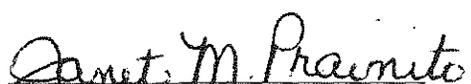


Commissioner – Woodrow L. Hay



Commissioner – Steven Holzman

ATTEST:



Janet M. Prainito, MMC
City Clerk



(Corporate Seal)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

ORDINANCE NO. 10-026

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF BOYNTON BEACH, BY AMENDING CHAPTER 2, ITEMS 6.A.1.G, 6.A.1.I, AND 6.A.1.J. BY ADDING REFERENCES TO THE REQUIREMENTS OF THE NEW SUBSECTION 11.R; AND BY AMENDING CHAPTER 2, SECTION 11, "SUPPLEMENTAL REGULATIONS", BY ADDING THE NEW SUBSECTION "R", "MEDICAL, PROFESSIONAL, BUSINESS OFFICES AND CLINICS"; TO PROVIDE FOR CLARIFICATION REGARDING THE APPLICABILITY OF CERTAIN STATE STATUTES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City Commission of the City of Boynton Beach (the "City Commission") is authorized and required to protect the public health, safety and welfare of its citizens; and

WHEREAS, the City Commission has the power and authority to enact regulations pertaining to land use and development within the City and for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, at the Florida Board of Medicine (the "Board") Meeting in December, 2008 at Tampa, Florida, the Board cited the "rapid proliferation of pain clinics that may be contributing to increased abuse of controlled substances," and concluded "there may be a need to develop rules and regulations for these clinics to provide oversight related to evaluation and follow up of these difficult patients and help physicians identify persons not seeking care but just pill shopping for narcotics;" and

WHEREAS, the Board further notes that "an average of 7 patients a day are reported as dying of prescription drug overdose in Florida, a number that far exceeds the number dying from illegal drug use"; and

WHEREAS, the U. S. Department of Health and Human Services has released data showing prescription drug deaths are now the fourth leading cause of death in the United States; and

WHEREAS, the City Commission finds that the fraudulent sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, the City staff is recommending amendments to the Land Development Regulations that restrict the dispensing of narcotic drugs on sight at medical offices in the City of Boynton Beach, to the extent permitted by law; and

WHEREAS, the City Commission has considered staff's recommendations and reports and determines and finds that it would be appropriate to amend the Land Development Regulations to reflect these amendments; and

WHEREAS, the City Commission finds that the adoption of this Ordinance is in the best interest of the health, safety and welfare of the citizens and residents of the City of Boynton Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

1 Section 2. That Chapter 2, Section 6.A.1, items “g”, “i”, and “j” are amended to
2 include a reference to the new corresponding requirements within Subsection 11.R to read as
3 follows:

4 g. Medical and dental offices and clinics. (Also see Section 11.R.
5 for restrictions applicable to those uses subject to the registration requirements
6 of Florida Statutes Ch. 458.3265 or Ch. 459.0137).

7 i. Pharmacies, medical and surgical supplies; orthopedic, invalid
8 and convalescent supplies; eyeglasses and hearing aids. (Also see Section
9 11.R. for restrictions applicable to those uses subject to the registration
10 requirements of Florida Statutes Ch. 458.3265 or Ch. 459.0137).

11 j. Professional and business offices. (Also see Section
12 11.R. for restrictions applicable to those uses subject to the registration
13 requirements of Florida Statutes Ch. 458.3265 or Ch. 459.0137).

14
15 Section 3. That Chapter 2, Section 11. *Supplemental Regulations* of the Land
16 Development Regulations of the City of Boynton Beach is amended by adding the new
17 Subsection “R”, “Certain Medical, Professional, and Business Offices and Clinics”, to read as
18 follows:

19
20 R. CERTAIN MEDICAL, PROFESSIONAL AND BUSINESS OFFICES
21 AND CLINICS:

22
23 1. Purpose and Intent. These regulations are in connection with the
24 mass effort to discourage the misuse and abuse of narcotics and other
25 controlled substances such as pain medications, and the impacts upon land uses
26 that are associated with businesses that would operate principally to dispense
27 pain medications for chronic pain but without the services of typical medical
28 offices that provide thorough on-site examinations, medical treatments or
29 procedures, and continued medical oversight. Such businesses have been
30 determined to be associated with the excessive use of, addictions to, and
31 subsequent illegal sales/distribution of addictive controlled substances.

32
33 2. Applicability. This section applies to all medical, professional
34 and business offices and clinics. Such uses shall be subject to the following:

35
36 a. On-site dispensing of controlled substances that are
37 identified in Schedule II, III, or IV in Sections 893.03, 893.035 or
38 893.036, Florida Statutes, is prohibited, unless otherwise expressly
39 permitted by statutory or general law. The following are exempt from
40 this prohibition:

41 1. A health care practitioner when administering a
42 controlled substance directly to a patient if the amount of the
43 controlled substance is adequate only intended to treat the
44 patient during that particular treatment session.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

2. A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

3. A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

4. A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

5. A health care practitioner when dispensing a one-time, 72-hour emergency resupply of controlled substance to a patient.

3. Enforcement

a. Law enforcement officers shall, in connection with their duties imposed by law, diligently enforce the provisions of this Section and may issue citations, arrest and arrest with warrant persons acting in violation of this Section.

b. Law enforcement officers shall have the authority to seize, confiscate and impound any substance, or other article which, upon probable cause, they find to be used or possessed in violation of this Section.

c. The City may prosecute violations by issuance of Notices to Appear for violation of a CITY Ordinance, in which case, the penalty for a violation shall be as follows:

- 1. First violation - \$100.00
- 2. Second violation within twelve (12) months of adjudication of first violation - \$500.00
- 3. Third violation within eighteen (18) months of adjudication of first violation - \$1000.00

Each calendar day on which a violation exists shall constitute a separate violation for the purpose of determining the fine.

d. A violation of this Section may be prosecuted as a nuisance. The City Attorney may bring suit on behalf of the City, or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

any affected citizen may bring suit in his/her name against the person or persons causing or maintaining the violation, or against the owner/agent of the building or property on which the violation exists. Relief may be granted according to the terms and conditions of Chapter 15, Article 8 of the City of Boynton Beach Code of Ordinances and/or Chapter 60, Florida Statutes, entitled Abatement of Nuisances.

e. Any person convicted of violating any of the terms or provisions of this article or any code, requirements, or standards adopted hereby shall be subject to the penalties as provided in Chapter 1, Section 1-6 of the City of Boynton Beach Code of Ordinances. In addition, the City may use any equitable or legal remedy available at law to enforce any violation of the terms or provisions of this Section.

Section 4. Each and every other provision of the Land Development Regulations not specifically amended herein, shall remain in full force and effect as originally adopted.

Section 5. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this ordinance as a whole or part thereof other than the part declared to be invalid.

Section 6. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 7. Authority is hereby given to codify this ordinance.

Section 8. That this ordinance shall become effective immediately upon its passage on second and final reading.

{REMAINDER INTENTIONALLY LEFT BLANK}

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

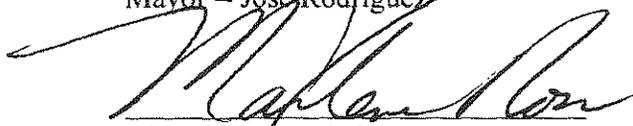
FIRST READING this 19th day of OCTOBER, 2010.

SECOND, FINAL READING AND PASSAGE this 3rd day of November, 2010.

CITY OF BOYNTON BEACH, FLORIDA

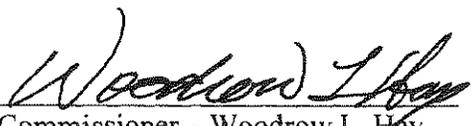


Mayor – Jose Rodriguez

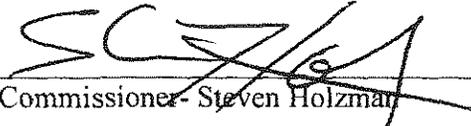


Vice Mayor – Marlene Ross

Commissioner – William Orlove

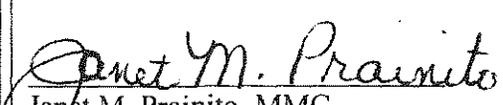


Commissioner – Woodrow L. Hay



Commissioner – Steven Holzman

ATTEST:



Janet M. Prainito, MMC
City Clerk

(Corporate Seal)

