

ORDINANCE NO. 2011-27

AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS FLORIDA ESTABLISHING REGULATIONS FOR ESTABLISHMENTS THAT DISPENSE CONTROLLED SUBSTANCES; AMENDING THE CODE OF ORDINANCES AT CHAPTER 1 "GENERAL PROVISIONS", SECTION 1-2; AT CHAPTER 34 "LAND DEVELOPMENT", ARTICLE VI, "LAND USE", DIVISION 6 "DISTRICT REGULATIONS", SUBDIVISION IV, "CN COMMERCIAL NEIGHBORHOOD", SECTION 34-792 and SUBDIVISION V, "CG COMMERCIAL GENERAL", SECTION 34-824; AND ADDING A NEW SUBDIVISION XXV AT CHAPTER 34 "LAND DEVELOPMENT", ARTICLE VI, "LAND USE", DIVISION 7 "SUPPLEMENTAL DISTRICT REGULATIONS", ENTITLED "SALE OR DISPENSING OF CONTROLLED SUBSTANCES"; RENUMBERING CHAPTER 34 "LAND DEVELOPMENT", ARTICLE VI, "LAND USE", DIVISION 8 "OFF STREET PARKING AND LOADING"; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 19, 2009 the Broward County Grand Jury issued an interim report on "The Proliferation of Pain Clinics in South Florida" in which it established the following facts: (a) from August 2008 to November 2009 the number of pain clinics operating in South Florida increased at an average of 1 new clinic every 4 days; (b) from October 1, 2008 through March 31, 2009, 49 of the top 50 dispensing doctors of Oxycodone in the United States were in Florida, with 43 of those in South Florida; (c) in Florida, Palm Beach County is second only to Broward County in the number of Oxycodone units dispensed between October 2008 and March 2009 by the top 50 dispensing doctors within the United States and almost four times higher than Miami-Dade County; (d) in 2008 in Florida, prescription drugs were found at lethal levels in an average of ten (10) reported deaths per day;(e) pain clinics are migrating north from Broward County to major metropolitan areas; and

WHEREAS, the Broward County Grand Jury heard testimony from law enforcement officials that criminal activity increases in areas where pain management clinics are located; and

WHEREAS, the Village Council 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 South Florida, including Palm Beach County and municipalities in the County, that dispense drugs on-site; and

WHEREAS, the threat of increased crime associated with such clinics is significant and could undermine the economic health of the Village's development and re-development efforts; and

WHEREAS, on February 25, 2010 the Village adopted Ordinance No. 2010-03 establishing a moratorium on the establishment of new pain management clinics within the Village of Palm Springs, said moratorium then extended by Ordinance No.'s 2010-11, 2011-11, and 2011-17 until December 8, 2011 while appropriate zoning regulations could be developed; and

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

WHEREAS, it is not the intent of this Ordinance to interfere with the legitimate medical use of controlled substances, but rather to deter the illegal distribution of such drugs by restricting on-site sale and/or dispensing; and

WHEREAS, the Land Development Board of the Village of Palm Springs recommended approval to the Village Council of the regulations at their November 8, 2011 meeting; and

WHEREAS, the Village Council sitting as the Local Planning Agency has determined that the change is consistent with and furthers the goals, objectives, and policies of the Comprehensive Plan; and

WHEREAS, the Village Council finds that it is in the best interests of the citizens of the Village of Palm Springs to amend the Village code as stated herein and that such amendments will promote the health, safety and welfare of the citizens of the Village of Palm Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA:

Section 1. The foregoing recitals are incorporated herein as true and correct findings of fact of the Village Council, and serve as a basis for adoption of this Ordinance.

Section 2. Chapter 1, Section 1-2, "Definitions and rules of construction" of the Village Code is hereby amended as follows:

Business Office. See Office, Business.

Office, Business. The term "office, business" shall mean any commercial activity primarily conducted in an office, not involving the sale of goods or commodities available in the office and not dispensing personal services, including such businesses as real estate brokers, insurance offices, accountants, credit reporting agencies, telephone answering services or any similar use. This definition does not include a medical or dental office.

Clinic, medical. See Office, Medical or Dental

Drugstore. The term drugstore shall mean a store engaged in the sale of prescription and non-prescription drugs and other items not necessarily related to pharmaceuticals. Accessory services such as photo processing, eyeglass care, and vaccinations may also be offered.

Nursing and convalescent facilities. The term “nursing and convalescent facilities” shall mean, a building where for compensation pursuant to a previous arrangement, on-site in patient overnight care is offered or provided for three or more persons suffering from illness, other than contagious disease, sociopathic behavior or psychopathic behavior, which is not of sufficient severity to require hospital attention, or for three or more persons requiring further institutional care after being discharged from a hospital, other than a mental hospital. Patients usually require domiciliary care in addition to nursing care.

Office, Medical or Dental. The term “office, medical or dental”, shall mean a facility that provides outpatient services to the public by physicians, dentists, surgeons, chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, (who are also known as health care practitioners) or others who are duly licensed to practice their respective health care professions in the State of Florida, as well as others, including but not limited to, technicians and assistants who are acting under the supervision and control of a licensed health care practitioner.

Personal Service. The term “personal service” shall mean establishments primarily engaged in providing services involving the care of a person or his apparel. Such services may include but not be limited to, beauty parlors, shops or salons, barber shops, tanning salons, massage or any similar use not involving the sale of any retail product. This definition does not include services provided in a medical or dental office.

Pharmacy. The term “pharmacy” shall mean an establishment or a portion of an establishment which is engaged in the preparation, dispensing and/or sale of prescription drugs and the sale of items related to pharmaceuticals or health care such as prosthetic supplies, surgical instruments and supplies, and the sale and/or rental of aid for invalids.

Professional office. The term "professional office" shall mean the office of a person engaged in any occupation, vocation or calling, not purely commercial, mechanical or agricultural, in which a professed knowledge or skill in some department of science or learning is used by its practical application to the affairs of others, either advising or guiding them in serving their interest or welfare through the practice of an art founded thereon. This definition does not include a medical or dental office.

Professional services. The term "professional services" shall mean the conduct of business in any of the following related categories: architectural, engineering, planning,

law, medicine, music, art, interior design, ~~dentistry~~, accounting, insurance, real estate, finance and securities investments, and any similar type of business. This definition does not include services provided in a medical or dental office.

Section 3. Chapter 34, “Land Development”, Article VI, “Land Use”, Division 6, “District Regulations”, Subdivision IV, “CN Commercial Neighborhood”, Section 34-792, “Permitted Uses” is hereby amended as follows:

Section 34-792. Permitted Uses.

(3) Medical and Dental Offices.

(4) Retail Sales and services such as Pharmacies, florists, camera and photo supplies and studios, delicatessens for takeout only, clothing stores, sale of videos and video accessories (excluding adult entertainment) , card and gift stores, coin laundries and dry cleaning, shoe stores (including repair), music stores, sporting goods, pet shops and similar shops.

(5) Galleries and fine art studios, excluding adult entertainment establishments.

Section 4. Chapter 34, “Land Development”, Article VI, “Land Use”, Division 6, “District Regulations”, Subdivision V, “CG Commercial General”, Section 34-824, “Special Exceptions” is hereby amended as follows:

(32) Laboratories

Section 5. Chapter 34, “Land Development”, Article VI, “Land Use”, Division 7, “Supplemental District Regulations”, is amended by adding a new Subdivision XXV as follows:

SUBDIVISION XXV.

SALE OR DISPENSING OF CONTROLLED SUBSTANCES.

Sec. 34-1319. Purpose.

The purpose of this division is to establish regulations for the on-site sale or dispensing of controlled substances. These regulations are in conjunction with efforts within the State of Florida and Palm Beach County to discourage the misuse and abuse of narcotics and other controlled substances such as pain medications, and reduce the impacts associated with businesses that would operate principally to sell or dispense pain medications for chronic pain but without the services of typical medical offices that provide thorough on-site examinations, medical treatments or procedures, and continued medical oversight. Such businesses have been determined to be associated with the excessive use of, addictions to, and illegal sales and/or diversion and distribution of controlled substances.

Sec. 34-1320. Requirements and Administration.

(1) Medical and Dental Offices and Medical Clinics. On-site sale or dispensing of controlled substances that are identified in Schedule II, III, or IV in Section 893.03, and as further amended by Sections 893.035, 893.0355, or 893.0356, Florida Statutes, as amended from time to time, is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

- a. A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- b. 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.
- c. A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- d. A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- e. A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(2) Nursing and Convalescent Facilities. On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Section 893.03, and as further amended by Sections 893.035, 893.0355, or 893.0356, Florida Statutes, as amended from time to time, shall be limited to that administered directly to a patient in an amount adequate to treat the patient during that particular treatment session.

(3) Pharmacies and Drugstores with or without Drive-Thru Pharmacies:

All pharmacies and drugstores shall adhere to the following:

- a. No more than 15% of the total number of prescriptions filled within a thirty (30) day period can be derived from the sale of controlled substances that are identified in Schedule II in Section 893.03, and as further amended by Sections 893.035, 893.0355, or 893.0356, Florida Statutes, as amended from time to time, as determined by audits or information provided through the Florida Department of Health or any other government agency having the legal right to view such records.

- b. All pharmacies, drug stores, and drug stores with drive thru pharmacies shall be staffed by a state licensed pharmacist who shall be present during all hours the pharmacy function is open for business.

Section 34-1321. Prohibited.

Other than those listed in Section 34-1459, no use, occupancy, or business, however named or defined, shall sell, dispense, or otherwise provide controlled substances that are identified in Schedule II, III, or IV in Section 893.03, and as further amended by Sections 893.035, 893.0355, or 893.0356, Florida Statutes, as amended from time to time.

Section 34-1322. Violations and Penalties.

It shall be unlawful for any person to violate any of the provisions of this Division. Violations of this Division shall be enforced in accordance with chapter 2, code enforcement procedures, by the issuance of a code enforcement citation or notice of violation. If a citation is issued, the fine shall be \$200.00 for the first violation and \$500.00 for any repeat violation unless otherwise set by resolution or the Special Magistrate. Each day of violation shall be considered a separate offense. Further, any violation of the provisions of this Division may be prosecuted by the Village in County Court as a misdemeanor of the second degree and punished by a fine of not more than \$500.00 and/or imprisonment in the county jail for not more than 60 days. The Village shall also be entitled to take any other appropriate legal action, including, but not limited to, cease and desist orders, other administrative action and requests for temporary and permanent injunctions to enforce the provisions of this Division. The appropriate Village official may also revoke or temporarily suspend any active building permits; certificates of occupancy; and/or licenses if a violation of this Division is determined by the Village, the Special Magistrate and/or appropriate Court. It is the purpose of this subsection to provide additional cumulative remedies to the Village to enforce this Division.

Secs. 34-1323 – 34-1325. Reserved.

Section 6, Chapter 34, “Land Development”, Article VI, “Land Use”, Division 8, “Off Street Parking and Loading”, is hereby renumbered as follows:

Sec. 34-1326. - Scope and intent of division.

Sec. 34-1327. - Definitions; application of division.

Sec. 34-1328. - Minimum off-street parking bay dimensions.

Sec. 34-1329. - Minimum requirements by use.

Sec. 34-1330. - Off-street loading.

Sec. 34-1331. - Marking and signs.

Sec. 34-133. - Drainage; maintenance; restriction of use; pavement; additional application.

Sec. 34-1333. - Certificate of occupancy.

Sec. 34-1334. - On-street parking.

Sec. 34-1335. - Review of parking standards.

Secs. 34-1336—34-1350. - Reserved.

Section 7. Codification. This ordinance shall be codified in the Code of Ordinances of the Village of Palm Springs, Florida.

Section 8. Repeal of Conflicting Ordinances. All ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 9. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this ordinance.

Section 10. Effective Date. This ordinance shall become effective immediately upon adoption.

Council Member _____, offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Council Member _____, and upon being put to a vote, the vote was as follows:

	Aye	Nay	Absent
BEV SMITH, MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOUG GUNTHER, VICE MAYOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, MAYOR PRO TEM	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, COUNCIL MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SERGIO ESCALADA, COUNCIL MEMBER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Mayor thereupon declared the Ordinance duly passed and adopted this 8th day of DECEMBER, 2011.

VILLAGE OF PALM SPRINGS, FLORIDA

BY: _____
BEV SMITH, MAYOR

First reading_____

Second reading _____

ATTEST:

BY: _____
VIRGINIA M. WALTON, VILLAGE CLERK

REVIEWED FOR FORM AND LEGAL SUFFICIENCY

BY: _____
GLEN J. TORCIVIA, VILLAGE ATTORNEY