

ORDINANCE NO. 2016-19

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING CHAPTER 86, LAND DEVELOPMENT CODE, ARTICLE V, USE REGULATIONS, DIVISION 2, RESOURCE AND CONSERVATION ZONING DISTRICTS, SECTIONS 86-70 AND 86-71; DIVISION 4, BUSINESS ZONING DISTRICTS, SECTIONS 86-90, 86-91 AND SECTIONS 86-94 THROUGH 86-97; DIVISION 5, INDUSTRIAL ZONING DISTRICTS, SECTION 86-100; DIVISION 6, COMMUNITY FACILITIES ZONING DISTRICTS, SECTION 86-110; DIVISION 7, SPECIAL AND OVERLAY ZONING DISTRICTS, SECTION 86-120; DIVISION 8, PLANNED DEVELOPMENT ZONING DISTRICTS, SECTIONS 86-130, 86-131 AND 86-132 REGARDING SPECIAL EXCEPTIONS AND PROHIBITED USES; AMENDING DIVISION 9, SPECIFIC USE REGULATIONS BY ADDING SECTION 86-155, PAIN MANAGEMENT CLINICS; AMENDING ARTICLE VIII, GENERAL ADMINISTRATIVE PROVISIONS, SECTION 86-570(b), DEFINITIONS; AMENDING CHAPTER 122, ZONING, ARTICLE V, SUPPLEMENTARY ZONING DISTRICT REGULATIONS, DIVISION 2, OFF-STREET PARKING AND LOADING VEHICULAR FACILITIES, SECTION 122-434, NUMBER OF PARKING SPACES; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, municipalities have broad home rule powers granted by the Florida Constitution to enact ordinances which are not inconsistent with general or special law for the purpose of protecting the public health, safety, and welfare of its citizens; and

WHEREAS, the threat of illegal drug activity and increased crime associated with illicit pain management clinics, also known as “pill mills,” is significant and could undermine the economic health of the city’s development and redevelopment efforts; and

WHEREAS, many families have experienced personal misery and tragedies as a result of the abuse and overdose of controlled substances obtained from pill mills; and

WHEREAS, the city does not want to unduly interfere with the legitimate medical use of controlled substances by properly licensed pain management clinics and other medical offices; and

WHEREAS, the reputation of legitimate pain management clinics suffers from the proliferation of pill mills; and

WHEREAS, the prescription of controlled substances by legitimate pain management clinics is necessary for public health; and

WHEREAS, pain management is part of quality medical practice for all patients with pain, whether acute pain or chronic pain, and it is especially urgent for patients who experience pain as a result of terminal illness; and

WHEREAS, physicians should not unduly fear regulatory sanctions when legitimately prescribing and dispensing appropriate and effective pain relief, but should feel the full force and effect of prosecution under the law when illegally prescribing pain medication at pill mills; and

WHEREAS, on June 7, 2011, Sarasota County enacted Ordinance No. 2011-016 to provide regulatory standards for pain management clinics including issuance of Local Business Tax Receipts; and

WHEREAS, Sarasota County Ordinance No. 2011-016 for regulation of pain management clinics applies to all municipalities within Sarasota County; and

WHEREAS, the City of Venice has the responsibility of developing zoning regulations which regulate all land uses within its municipal limits; and

WHEREAS, on February 12, 2013, the City of Venice adopted Ordinance No. 2013-03 to establish regulatory standards for pain management clinics; and

WHEREAS, Ordinance No. 2013-03 included a sunset provision that caused the ordinance to expire on February 12, 2015; and

WHEREAS, the city desires to maintain the regulatory standards adopted within the original ordinance and readopt the standards with no substantive changes; and

WHEREAS, the Planning Commission considered this ordinance and following a duly noticed public hearing on October 4, 2016, forwarded its recommendation for approval and findings of consistency with the comprehensive plan to city council as required by law; and

WHEREAS, city council has received and considered the report of the planning commission recommending approval; and

WHEREAS, the city, consistent with Sarasota County, deems it essential to continue to provide regulatory standards for pain management clinics located within its boundaries; and

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

Section 1. Findings. The whereas clauses set forth above are hereby adopted as findings by city council for the adoption of this ordinance. Based upon the findings made relative to this

proposed amendment, it has been determined that the land development code shall be amended as described below.

Section 2. Chapter 86, Land Development Code, Article V, Use Regulations, Division 2, Resources and Conservation Zoning Districts, Sections 86-70 and 86-71 are amended to read as follows:

Sec. 86-70. OUC open use conservation district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~The following uses and structures are prohibited~~ in the OUC district are as follows:

(1) through (4) No change.

(5) Pain management clinic.

(e) through (j) No change.

Sec. 86-71. MP marine park district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited~~ in the MP district are as follows:

(1) Pain management clinic.

(e) through (j) No change.

SECTION 3. Chapter 86, Land Development Code, Article V, Use Regulations, Division 4, Business Zoning Districts, Sections 86-90, 86-91 and Sections 86-94 through 86-97 are amended to read as follows:

Sec. 86-90. OPI office, professional and institutional district.

(a) through (d) No change.

(e) *Special exceptions.* The following special exceptions are permissible in the OPI district after public notice and hearing by the planning commission:

(1) through (10) No change.

(11) Pain management clinic.

(f) through (k) No change.

Sec. 86-91. CN commercial, neighborhood district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited in the CN district, including the following, which are listed for emphasis~~ are as follows:

(1) through (3) No change.

(4) Pain management clinic.

(e) through (j) No change.

Sec. 86-94. CBD commercial, business district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited in the CBD district, including the following~~ are as follows:

(1) through (5) No change.

(6) Pain management clinic.

(e) through (k) No change.

Sec. 86-95. OMI office, medical and institutional district.

(a) through (d) No change.

(e) *Special exceptions.* The following special exceptions are permissible in the OMI district after public notice and hearing by the planning commission:

(1) through (3) No change.

(4) Pain management clinic.

(f) through (k) No change.

Sec. 86-96. CHI commercial, highway interchange district.

(a) through (d) No change.

(e) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure~~

~~not specifically, provisionally or by reasonable implication permitted in this section are prohibited in the CHI district, including the following, which are listed for emphasis are as follows:~~

(1) through (6) No change.

(7) Pain management clinic.

(f) through (l) No change.

Sec. 86-97. CMU commercial mixed-use district.

(a) through (e) No change.

(f) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited in the CMU district, including the following are as follows:~~

(1) through (4) No change.

(5) Pain management clinic.

(g) through (o) No change.

SECTION 4. Chapter 86, Land Development Code, Article V, Use Regulations, Division 5, Industrial Zoning Districts, Section 86-100 is amended to read as follows:

Sec. 86-100. ILW industrial, light and warehousing district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited in the ILW district, including the following, which are listed for emphasis are as follows:~~

(1) through (9) No change.

(10) Pain management clinic.

(e) through (k) No change.

SECTION 5. Chapter 86, Land Development Code, Article V, Use Regulations, Division 6, Community Facilities Zoning Districts, Section 86-110 is amended to read as follows:

Sec. 86-110. GU government use district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses ~~or~~ and structures in the GU district are as follows: None.

(1) Pain management clinic.

(e) through (j) No change.

SECTION 6. Chapter 86, Land Development Code, Article V, Use Regulations, Division 7, Special and Overlay Zoning Districts, Section 86-120 is amended to read as follows:

Sec. 86-120. VG Venetian gateway district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures in the VG district are as follows:

(1) Pain management clinic.

(e) through (h) are subsequently lettered accordingly.

SECTION 7. Chapter 86, Land Development Code, Article V, Use Regulations, Division 8, Planned Development Zoning Districts, Sections 86-130, 86-131 and 86-132 are amended to read as follows:

Sec. 86-130. PUD planned unit development district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures ~~Any use or structure not specifically, provisionally or by reasonable implication permitted in this section is prohibited in PUD districts, including the following, which is listed for emphasis~~ are as follows:

(1) Off-site signs.

(2) Pain management clinic.

(e) through (x) No change.

Sec. 86-131. CSC commercial, shopping center district.

(a) and (b) No change.

(c) *Prohibited uses and structures.* Prohibited uses and structures in the CSC district are as follows:

(1) Pain management clinic.

(d) through (o) are subsequently lettered accordingly.

Sec. 86-132. PID planned industrial development district.

(a) through (c) No change.

(d) *Prohibited uses and structures.* Prohibited uses and structures in the PID district are as follows:

(1) Pain management clinic.

(d) through (s) are subsequently lettered accordingly.

SECTION 8. Chapter 86, Land Development Code, Article V, Use Regulations, Division 9, Specific Use Regulations, is amended by adding Section 86-155, Pain management clinics, as follows:

Division 9. Specific Use Regulations

Sec. 86-155. Pain management clinics. Pain management clinics shall be permissible only by special exception within the OPI, OMI and CG zoning districts.

(a) Development standards:

1. Controlled substances. The on-site sale, provision, or dispensing of controlled substances at a pain management clinic is prohibited except as specifically authorized by applicable federal or state law.

2. Loitering. The pain management clinic shall provide adequate seating for its patients and business invitees. The pain management clinic shall not direct or encourage any patient or business invitee to stand, sit (including in a parked car), or gather or loiter outside of the building where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties for any period of time longer than that reasonably required to arrive and depart. The pain management clinic shall post conspicuous signs on at least three sides of the building that no loitering is allowed on the property.

3. Queuing of vehicles. The pain management clinic shall ensure that there is no queuing of vehicles in the right-of-way. The pain management clinic shall take all necessary and immediate steps to ensure compliance with this paragraph.

4. Alcoholic beverages. No consumption of alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks, or right-of-way. The pain management clinic shall take all necessary and immediate steps to ensure compliance with this paragraph.

5. Separation distances. Pain management clinics and pharmacies shall not be co-located on the same property.

6. Operating hours. Pain management clinics shall only be allowed to operate between 7:00 a.m. and 7:00 p.m., Monday through Friday, and between 7:00 a.m. and 12:00 p.m. on Saturdays. Pain management clinics shall not operate on Sundays.

7. Compliance with other laws. All pain management clinics shall at all times be in compliance with all federal and state laws, Sarasota County regulations and the city Land Development Code, as amended.

8. Nonconformities. The requirements for separation distances as outlined in this section shall be prospective only from the effective date of this ordinance, and therefore existing clinics in the city which do not meet the separation distance requirements shall be granted nonconforming status. These nonconforming characteristics of use shall be regulated in the same manner as set forth in sec. 86-555 of this code. Therefore, no change shall be made by existing clinics which increases the nonconforming characteristics of use of separation distances. Notwithstanding any other provision of sec. 86-555 of this code, all other characteristics of use (controlled substances, loitering, queuing of vehicles, alcoholic beverages, operating hours, and compliance with other laws) shall be applicable to all existing and future pain management clinics.

Section 9. Chapter 86, Land Development Code, Article VIII, General Administrative Provisions, Section 86-570(b), Definitions is amended by adding the following definitions:

Sec. 86-570. Definitions.

(a) No change.

(b) Any word not specifically defined herein shall be interpreted as meaning its most commonly used definition in general society.

Acute Pain means the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma, or illness. It is generally short-lived. Acute pain responses may vary between patients and between pain episodes within an individual patient. Acute pain episodes may be present in patients with chronic pain.

Chronic pain means pain which includes one or more of the following characteristics: (a) the pain persists beyond the usual course of a disease that is the cause of the pain; (b) the pain persists beyond the expected time for healing from an injury or trauma that is the cause of the pain; or (c) the pain is associated with long-term incurable or intractable medical illness or disease. It is not amenable to routine pain control methods. Patients with chronic pain may have either continuous or intermittent pain, including episodes of acute pain related to disease progression or reoccurrence.

Controlled substance means controlled substances listed in Schedule II, Schedule III, or Schedule IV, in F.S. § 893.03, recognized as effective for pain relief, including, but not limited to,

the following: buprenorphine, butorphenol, carisoprodol, codeine, fentanyl, hydrocodone, hydromorphone, levorphanol, methadone, morphine, oxycodone, and propoxyphene. Additionally, the term includes benzodiazepines, such as alprazolam, when prescribed in addition to or directly preceding or following another prescription for a controlled substance for pain relief. However, the term does not include suboxone, which contains a mixture of buprenorphine and naloxone.

Pain management clinic means a privately owned clinic, facility, or office, whatever its title, including but not limited to a “wellness center,” “urgent care facility,” or “detox center,” which engages in pain management. This definition includes the following:

(a) A pain management clinic must have at least one of the following characteristics:

(1) It employs one or more persons who in a single day issue more than 20 prescriptions of a controlled substance for the treatment of pain, whether acute pain or chronic pain;

(2) It holds itself out through advertising as being in business to prescribe or dispense a controlled substance for the treatment of pain, whether acute pain or chronic pain;

(3) It holds itself out through advertising as being in business to provide services for the treatment of pain wherein the services are accompanied with prescription of or dispensing of a controlled substance for the treatment of pain, whether acute pain or chronic pain; or

(4) It meets the definition of pain management clinic in F.S. § 458.3265, as may be amended from time to time.

(b) A pain management clinic does not include any privately owned clinic, medical facility or office which has at least one of the following characteristics:

(1) The majority of the physicians who provide services in the clinic, facility, or office primarily provide surgical services (excluding interventional pain management procedures that are invoiced or coded as surgical procedures);

(2) It is licensed as a facility pursuant to F.S. ch. 395, (hospitals, etc.);

(3) It is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation’s most recent fiscal quarter exceed \$50 million;

(4) It is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

(5) It does not prescribe or dispense controlled substances for the treatment of pain, whether acute pain or chronic pain; or

(6) It is owned by a corporate entity exempt from federal taxation under 26 U.S.C. section 501(c)(3).

Section 10. Chapter 122, Zoning, Article V, Supplementary Zoning District Regulations, Division 2, Off-Street Parking and Loading Vehicular Facilities, Section 122-434, Number of Parking Spaces is amended as follows:

Chapter 122

ZONING

ARTICLE V. SUPPLEMENTARY ZONING DISTRICT REGULATIONS

Division 2. Off-Street Parking and Loading Vehicular Facilities

Sec. 122-434. Number of parking spaces.

The off-street parking required by this chapter shall be provided and maintained on the basis of the following minimum requirements. See subsection (6) of this section for special requirements in the CBD zoning district.

(1) No change.

(2) *Office and institutional uses.*

a. No change.

b. Medical and dental offices, medical clinics and pain management clinics: One space for every 150 square feet of nonstorage floor area.

c. through n. No change.

(3) through (7) No change.

Section 11. All Ordinances or parts of Ordinances in conflict herewith shall be and the same are hereby repealed.

Section 12. Severability. 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 13. Effective Date. This Ordinance shall take effect immediately upon approval and adoption as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS DAY OF .

First Reading:

Final Reading:

Adoption:

John W. Holic, Mayor

ATTEST:

Lori Stelzer, MMC, City Clerk

I, LORI STELZER, 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 day of a quorum being present.

WITNESS my hand and the official seal of said City this day of .

Lori Stelzer, MMC, City Clerk

(SEAL)

Approved as to form:

City Attorney