



**LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
PAIN MANAGEMENT CLINICS TASK FORCE – SUB-COMMITTEE**

WEDNESDAY, MARCH 2, 2011 AGENDA

2300 NORTH JOG ROAD

CONFERENCE ROOM VC-2E-12 – 2ND FLOOR 2:00 PM – 3:30 PM

A. CALL TO ORDER

1. Introduction of Subcommittee Members and Interested Parties
2. Select Chair and Vice Chair
3. Additions, Substitutions and Deletions to Agenda
4. Motion to Adopt Agenda

B. PURPOSE AND INTENT

1. Goal of Subcommittee
2. Timeframe/Schedule

C. BACKGROUND AND SUMMARY

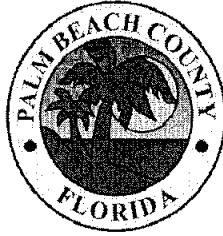
1. Status of State Legislation and Database
2. Law Enforcement
3. IPARC Subcommittee Report
4. What Other Jurisdictions Have Done

D. DISCUSSION

E. TOPICS FOR NEXT MEETING

F. PUBLIC COMMENT

G. Adjourn



**LAND DEVELOPMENT REGULATION ADVISORY BOARD
(LDRAB)**

Pain Management Clinics Task Force – Sub-Committee

WEDNESDAY, MARCH 2, 2011

2300 NORTH JOG ROAD

CONFERENCE ROOM VC-2E-12 – 2ND FLOOR 2:00 PM – 3:30 PM

CONTENTS OF PACKET

1. **PBC ORDINANCE 2010-009** - Moratorium on Pain Management Clinics amending the Unified Land Development Code (*Pages 1 to 7*)
2. **EXHIBIT F OF PBC ORDINANCE 2011-001** - Amendment to Pain Management Moratorium (*Pages 9 to 12*)
3. **PBC AFFIDAVIT OF AGREEMENT** - To be completed by applicant for Medical or Dental Office Business Tax Receipt (*Page 13*)
4. **IPARC REPORT**- Pain Management Clinic Subcommittee, July 14, 2010 (*Pages 15 to 17*)
5. **BROWARD COUNTY MEMORANDUM** - Local Government Regulations of Pain Management Clinics (*Pages 19 to 34*)
6. **ORDINANCE NO. 50-09, DELRAY BEACH** - Amendment to specific uses to include medical offices; to provide clarification regarding the dispensing of narcotic drugs; to provide definitions related to the regulation of medical offices (*Pages 35 to 38*)
7. **ORDINANCE NO. 2010-17, ORANGE COUNTY** - Relating to Pain Management Clinics (*Pages 39 to 45*)
8. **ORDINANCE NO. 2010-59, CITY OF TAMPA** - Relating to Pain Management Clinics (*Pages 47 to 55*)
9. **ORDINANCE, MARTIN COUNTY** - Amending Standards for Specific Uses and providing regulations for Pain Management Clinics (*Pages 57 to 66*)

Robb being in from above letter

ORDINANCE 2010 -009

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ENACTING A ONE YEAR MORATORIUM UPON THE ACCEPTANCE OF ZONING APPLICATIONS AND ALL APPLICABLE REQUESTS FOR ZONING APPROVAL FOR PAIN MANAGEMENT CLINICS, BY AMENDING THE UNIFIED LAND DEVELOPMENT CODE, ORDINANCE 03-067, AS AMENDED, AS FOLLOWS: **ARTICLE 1 - GENERAL PROVISIONS**; CHAPTER I, DEFINITIONS AND ACRONYMS; **ARTICLE 3 - OVERLAYS AND ZONING DISTRICTS**; CHAPTER B, OVERLAYS; CHAPTER E, PLANNED DEVELOPMENT DISTRICTS (PDDS); CHAPTER F, TRADITIONAL DEVELOPMENT DISTRICTS (TDDS); **ARTICLE 4 - USE REGULATIONS**; CHAPTER A, USE CLASSIFICATION; CHAPTER B, SUPPLEMENTARY USE STANDARDS; **ARTICLE 6 - PARKING**; CHAPTER A, PARKING; PROVIDING FOR: INTERPRETATION OF CAPTIONS; REPEAL OF LAWS IN CONFLICT; SEVERABILITY; A SAVINGS CLAUSE; INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND AN EFFECTIVE DATE.

19

WHEREAS, Section 163.3202, Florida Statutes, mandates the County compile Land Development Regulations consistent with its Comprehensive Plan into a single Land Development Code; and

22

WHEREAS, pursuant to this statute the Palm Beach County Board of County Commissioners (BCC) adopted the Unified Land Development Code (ULDC), Ordinance 2003-067, as amended from time to time; and

25

WHEREAS, the BCC desires to further amend the ULDC, based upon public participation and advice from the Palm Beach County Land Development Regulation Advisory Board; and

28

WHEREAS, the BCC has determined that the proposed amendments further a legitimate public purpose; and

30

WHEREAS, the Land Development Regulation Commission has found these amendments to the ULDC to be consistent with the Palm Beach County Comprehensive Plan; and

33

WHEREAS, the BCC hereby elects to conduct its public hearings on this Ordinance at 9:30 a.m.; and

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WHEREAS, the BCC has conducted public hearings to consider these amendments to the ULDC in a manner consistent with the requirements set forth in Section 125.66, Florida Statutes; and

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WHEREAS, the BCC has considered the Broward County Grand Jury Interim Report on the Proliferation of Pain Clinics in South Florida dated November 19, 2009; and

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WHEREAS, the grand jury report found that from August 2008 to November 2009 a new pain clinic opened in Broward and Palm Beach Counties on average of every 3 days; and

43

WHEREAS, the grand jury heard testimony from law enforcement officials that criminal activity increases in areas where pain management clinics are located; and

44

1 **WHEREAS**, the BCC has been made aware of numerous news reports describing a
2 "pipeline" of trafficking drugs from South Florida pain management clinics to users in other
3 states, such as Kentucky, West Virginia, and Ohio; and

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

7 **WHEREAS**, in Chapter 2009-198, Laws of Florida, the Florida Legislature
8 recognized that pharmaceutical drug diversion hurts this state significantly in terms of lost
9 lives, increased crime, human misery from addiction, ballooning health care costs and
10 Medicaid fraud; and

11 **WHEREAS**, on January 21, 2010 the Palm Beach County Multi-jurisdictional Issues
12 Forum approved a request made by the BCC on December 8, 2009 that the regulation of
13 pain management clinics be addressed by the Forum as an issue of multi-jurisdictional
14 significance; and

15 **WHEREAS**, adoption of the moratorium will provide Palm Beach County an
16 opportunity to develop regulations that address the secondary effects of pain management
17 clinics and their impacts on the community.

18
19 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS**
20 **OF PALM BEACH COUNTY, FLORIDA, as follows:**

21
22 **Section 1. Adoption**

23 The amendments set forth in Exhibit A, attached hereto and made a part hereof, are
24 hereby adopted.

25
26 **Section 2. Interpretation of Captions**

27 All headings of articles, sections, paragraphs, and sub-paragraphs used in this
28 Ordinance are intended for the convenience of usage only and have no effect on
29 interpretation.

30
31 **Section 3. Providing for Repeal of Laws in Conflict**

32 All local laws and ordinances in conflict with any provisions of this Ordinance are
33 hereby repealed to the extent of such conflict.

34
35 **Section 4. Severability**

1 If any section, paragraph, sentence, clause, phrase, word, map, diagram, or any
2 other item contained in this Ordinance is for any reason held by the Court to be
3 unconstitutional, inoperative, void, or otherwise invalid, such holding shall not affect the
4 remainder of this Ordinance.

5
6 **Section 5. Providing for a Savings Clause**

7 All development orders, permits, enforcement orders, ongoing enforcement actions,
8 and all other actions of the Board of County Commissioners, the Zoning Commission, the
9 Development Review Officer, Enforcement Boards, all other County decision-making and
10 advisory boards, Special Masters, Hearing Officers, and all other County officials, issued
11 pursuant to the regulations and procedures established prior to the effective date of this
12 Ordinance shall remain in full force and effect.

13
14 **Section 6. Inclusion in the Unified Land Development Code**

15 The provisions of this Ordinance shall be codified in the Unified Land Development
16 Code and may be reorganized, renumbered or re-lettered to effectuate the codification of
17 this Ordinance.

18
19 **Section 7. Providing for an Effective Date**

20 The provisions of this Ordinance shall become effective upon filing with the
21 Department of State.

22
23 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
24 County, Florida, on this the 31st day of March, 20 10.

SHARON R. BOCK, CLERK & PALM BEACH COUNTY, FLORIDA, BY
COMPTROLLER ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
Deputy Clerk
FLORIDA



By: [Signature]
Burt Aaranson, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]
County Attorney

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EFFECTIVE DATE: Filed with the Department of State on the 2nd day of
April, 20 10.

EXHIBIT A

PAIN MANAGEMENT CLINICS
SUMMARY OF AMENDMENTS

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Part 1. ULDC, Articles 1.1.2.M.32, Medical or Dental Clinic and 1.1.2.P.1, Pain Management Clinic (pages 69 & 74 of 110), is hereby amended as follows:

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 Definitions

M. Terms defined herein or referenced in this Article shall have the following meanings:

32. ~~Medical Office or Dental Clinic Office~~ - an establishment where patients, who are not lodged overnight, are admitted for examination or treatment by persons practicing any form of healing or health-building services whether such persons be medical doctors, chiropractors, osteopaths, chiropractors, naturopaths, optometrists, dentists, or any such profession, the practice of which is lawful in the State of Florida. A pain management clinic shall not be considered a medical or dental office.

P. Terms defined herein or referenced in this Article shall have the following meanings:

1. Pain Management Clinic - all privately owned pain management clinics, facilities, or offices, which advertise in any medium for any type of pain management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and are required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, FL Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists: 1) beyond the usual course of the disease or the injury that is the cause of the pain; or 2) more than 90 days after surgery.

Part 2. ULDC, Table 3.B.2.A. - Airport Use Regulations (page 15 of 154), is hereby amended as follows:

Table 3.B.2.A - Airport Use Regulations

Use	Permitted	Conditional Permitted	Conditional Prohibited	Prohibited
Commercial Users				
Pain Management Clinic				91.1

[Ord. 2006-036] [Ord. 2008-003]

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Notes:

- Underlined language indicates proposed new language.
- ~~Language crossed-out~~ indicates language proposed to be deleted.
- (ellipses) indicates language not amended which has been omitted to save space.
- Relocated language is shown as *italicized* with reference in parenthesis.

EXHIBIT A

PAIN MANAGEMENT CLINICS
SUMMARY OF AMENDMENTS

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Part 3. ULDC, Table 3.E.1.B - PDD Use Matrix (page 75 of 154), is hereby amended as follows:

Table 3.E.1.B - PDD Use Matrix cont'd

Use Type	PUD					MUPD					MXPD		PIPD		M	R	N	
	Pods					FLU					FLU		Use Zone					
	R	C	R	C	A	C	C	C	C	I	I	C	C	I				C
E	O	E	I	G	L	H	L	H	R	N	H	H	N	O	N	H	P	
S	M	C	V	R			O	O		D		O	D	M	D	P	P	
				/						T		L	/	G			E	
				P														
Commercial Uses																		
Pain Management Clinic																		91.1
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2007-001] [Ord. 2007-013] [Ord. 2009-040]																		
Notes:																		
P Permitted by right																		
D Permitted subject to approval by the DRO																		
S Permitted in the district only if approved by Special Permit																		
R Permitted in the district only if approved by the Board of County Commissioners (BCC) as a requested use.																		

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Part 4. ULDC, Table 3.F.1.F - Traditional Development Permitted Use Schedule (page 118 of 154), is hereby amended as follows:

Table 3.F.1.F - Traditional Development Permitted Use Schedule (Continued)

District	TND						TMD			N O T E S	
	Urban/Suburban (U/S)			Exurban/Rural			U/S	Ex/Rural	AGR		
Tier	Res	Neighborhood Center (NC)	Open Space/ Rec	Res	N/C	Open Space/ Rec		Rural	Dev	Preserve	
Land Use Zone											
Commercial Uses											
Pain Management Clinic											91.1
Notes:											
P Permitted by right.											
D Permitted subject to approval by the DRO.											
S Permitted in the district only if approved by Special Permit.											
R Requested Use.											

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EXHIBIT A

PAIN MANAGEMENT CLINICS
SUMMARY OF AMENDMENTS

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Part 5. ULDC, Table 4.A.3.A - Use Matrix (page 14 of 161), is hereby amended as follows:

Table 4.A.3.A - Use Matrix Continued

Use Type	Zoning District Overlay																N			
	Agricultural/Conservation			Residential				Commercial					Industry Public			O				
	P	A	A	AR		R	R	R	R	C	C	C	C	C	I			I	P	I
	C	G	P	R	U	E	T	S	M	N	L	C	H	G	R	L	G	O	P	E
		R		S	S	A	A				O	O		E						
Commercial Uses																				
Pain Management Clinic																				91.1

Key:
 P Permitted by right
 D Permitted subject to approval by the DRO
 S Permitted in the district only if approved by Special Permit
 B Permitted in the district only if approved by the Zoning Commission (ZC)
 A Permitted in the district only if approved by the Board of County Commissioners (BCC)

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Part 6. ULDC, Art. 4.B.1.A, Definitions and Supplementary Standards for Specific Uses, [Related to Medical or Dental Office and Pain Management Clinics] (pages 63 & 68 of 161), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

12

Section 1 Uses

13

A. Definitions and Supplementary Standards for Specific Uses

14

83. Medical or Dental Office

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An establishment where patients, who are not lodged overnight, are admitted for examination or treatment by persons practicing any form of healing or health-building services whether such persons be medical doctors, chiropractors, osteopaths, chiropodists, naturopaths, optometrists, dentists, or any such profession, the practice of which is lawful in the State of Florida. A pain management clinic shall not be considered a medical or dental office.[Ord. 2005 - 002]

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91.1 Pain Management Clinic

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All privately owned pain management clinics, facilities, or offices, which advertise in any medium for any type of pain management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and are required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, FL Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists: 1) beyond the usual course of the disease or the injury that is the cause of the pain; or 2) more than 90 days after surgery.

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EXHIBIT A

PAIN MANAGEMENT CLINICS
SUMMARY OF AMENDMENTS

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a. Moratorium


1. The Board of County Commissioners of Palm Beach County does hereby impose a moratorium beginning on the effective date of this ordinance, upon the acceptance of zoning applications and all applicable requests for zoning approval for pain management clinics.
2. This Ordinance shall expire upon the earlier of the following: one year from the effective date of this ordinance or upon the effective date of Unified Land Development Code amendments dealing with pain management clinics to be considered by the Board of County Commissioners during the moratorium.

Part 7. ULDC, Table 6.A.1.B, Minimum Off-Street Parking and Loading Requirements [Related to Medical or Dental Office and Pain Management Clinics] (page of 161), is hereby amended as follows:

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements - Cont'd

Use Type: Commercial	Parking	Loading ¹
Pain Management Clinic	1 space per 200 sq. ft.	C
[Ord. 2005-002] [Ord. 2005-041] [Ord. 2006-004] [Ord. 2008-037]		
Loading Key:		
Standard "A" - One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.		
Standard "B" - One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.		
Standard "C" - One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.		
Standard "D" - One space for each 50 beds for all facilities containing 20 or more beds.		
Standard "E" - One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA.		
The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.		

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, SHARON R. BOCK, Clerk and Comptroller
certify this to be a true and correct copy of the original
filed in my office on March 31, 2010
at West Palm Beach, FL on 4/9/10
By Diane Brown
Deputy Clerk, COUNTY
FLORIDA



Notes:

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Relocated language is shown as *italicized* with reference in parenthesis.

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4 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH
5 COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE, ORDINANCE
6 03-067, AS AMENDED, AS FOLLOWS: **ARTICLE 1 – GENERAL PROVISIONS**; CHAPTER E,
7 PRIOR APPROVALS; CHAPTER I, DEFINITIONS AND ACRONYMS; **ARTICLE 2 –**
8 **DEVELOPMENT REVIEW PROCEDURES**; CHAPTER A, GENERAL; CHAPTER B, PUBLIC
9 HEARING PROCESS; CHAPTER D, ADMINISTRATIVE PROCESS; **ARTICLE 3 – OVERLAYS**
10 **AND ZONING DISTRICTS**; CHAPTER A, GENERAL; CHAPTER B, OVERLAYS; CHAPTER C,
11 STANDARD DISTRICTS; CHAPTER E, PLANNED DEVELOPMENT DISTRICTS (PDDS);
12 CHAPTER F, TRADITIONAL DEVELOPMENT DISTRICTS (TDDS); **ARTICLE 4 – USE**
13 **REGULATIONS**; CHAPTER A, USE CLASSIFICATION; CHAPTER B, SUPPLEMENTARY USE
14 STANDARDS, WHICH INCLUDES AN EXTENSION TO THE MORATORIUM UPON
15 ACCEPTANCE OF ZONING APPLICATIONS AND REQUESTS FOR ZONING APPROVAL
16 FOR PAIN MANAGEMENT CLINICS; **ARTICLE 5 - SUPPLEMENTARY STANDARDS**;
17 CHAPTER B, ACCESSORY AND TEMPORARY USES; CHAPTER C, DESIGN STANDARDS;
18 CHAPTER D, PARKS & RECREATION – RULES AND RECREATION STANDARDS; CHAPTER
19 G, DENSITY BONUS PROGRAMS; **ARTICLE 6 – PARKING**; CHAPTER A, PARKING;
20 **ARTICLE 7 – LANDSCAPING**; CHAPTER C, MGTS TIER COMPLIANCE; **ARTICLE 11 –**
21 **SUBDIVISION, PLATTING AND REQUIRED IMPROVEMENTS**; CHAPTER A, GENERAL
22 REQUIREMENTS; CHAPTER E, REQUIRED IMPROVEMENTS; CHAPTER F, VARIANCES;
23 **ARTICLE 12 – TRAFFIC PERFORMANCE STANDARDS**; CHAPTER H, CONSTRAINED
24 FACILITIES; **ARTICLE 14 – ENVIRONMENTAL STANDARDS**; CHAPTER A, SEA TURTLE
25 PROTECTION AND SAND PRESERVATION; **ARTICLE 17 – DECISION MAKING BODIES**;
26 CHAPTER C, APPOINTED BODIES; PROVIDING FOR: REPEAL OF LAWS IN CONFLICT;
27 SEVERABILITY; A SAVINGS CLAUSE; INTERPRETATION OF CAPTIONS; INCLUSION IN
28 THE UNIFIED LAND DEVELOPMENT CODE; AND, AN EFFECTIVE DATE.

29
30 **WHEREAS**, Section 163.3202, Florida Statutes, mandates the County compile Land
31 Development Regulations consistent with its Comprehensive Plan into a single Land
32 Development Code; and

33 **WHEREAS**, pursuant to this statute the Palm Beach County Board of County
34 Commissioners (BCC) adopted the Unified Land Development Code (ULDC), Ordinance 2003-
35 067, as amended from time to time; and

36 **WHEREAS**, the BCC desires to further amend the ULDC, based upon public participation
37 and advice from the Palm Beach County Land Development Regulation Advisory Board; and

38 **WHEREAS**, based upon the specific findings set forth in Palm Beach County Ordinance
39 2010-009, the Board of County Commissioners imposed a moratorium upon acceptance of
40 zoning applications and applicable requests for zoning approvals for pain management clinics
41 effective April 2, 2010; and

42 **WHEREAS**, despite the efforts of the Florida Legislature to address the problem, the
43 primary and secondary effects of pain management clinics continue to negatively impact Palm
44 Beach County; and

45 **WHEREAS**, the Board of County Commissioners desire to extend the moratorium to
46 provide the opportunity to work with the Palm Beach County Multi-Jurisdictional issues Forum to
47 develop local regulations to address the proliferation of Pain Management Clinics; and

48 **WHEREAS**, the moratorium will terminate upon adoption of such regulations, but in no
49 event shall the moratorium extend beyond September 30, 2011; and

1 **WHEREAS**, the Board of County Commissioners find that this moratorium is the
2 narrowest possible in scope and the shortest in duration to address this serious threat to the
3 health, safety and welfare of its citizens; and

4 **WHEREAS**, the BCC has determined that the proposed amendments further a legitimate
5 public purpose; and

6 **WHEREAS**, the Land Development Regulation Commission has found these
7 amendments to the ULDC to be consistent with the Palm Beach County Comprehensive Plan;
8 and

9 **WHEREAS**, the BCC hereby elects to conduct its public hearings on this Ordinance at
10 9:30 a.m.; and

11 **WHEREAS**, the BCC has conducted public hearings to consider these amendments to
12 the ULDC in a manner consistent with the requirements set forth in Section 125.66, Florida
13 Statutes.

14
15 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
16 **PALM BEACH COUNTY, FLORIDA, as follows:**

17 **Section 1. Adoption**

18 The amendments set forth in Exhibits listed below, attached hereto and made a part
19 hereof, are hereby adopted.

- 20 Exhibit A Article 2 – Development Review Procedures
- 21 Exhibit B Article 3 – Overlays & Zoning Districts
- 22 Exhibit C Article 6 – Parking
- 23 Exhibit D Article 12 – Traffic Performance Standards
- 24 Exhibit E Environmental Standards
- 25 Exhibit F Pain Management Clinic Moratorium
- 26 Exhibit G Density Bonus Program
- 27 Exhibit H Yard Waste
- 28 Exhibit I Emergency Structures
- 29 Exhibit J Barbed Wire
- 30 Exhibit K Big Box
- 31 Exhibit L Civic Pods
- 32 Exhibit M Infill Redevelopment Overlay
- 33 Exhibit N Land Development
- 34 Exhibit O Medical Office in INST FLU Designation
- 35 Exhibit P Open Space
- 36 Exhibit Q Public Park Landscape Standards
- 37 Exhibit R Recreational Facility (Clubhouse)
- 38 Exhibit S Westgate Community Redevelopment Area Overlay (WCRAO)

39 **Section 2. Providing for Repeal of Laws in Conflict**

41 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
42 repealed to the extent of such conflict.

43 **Section 3. Severability**

44 If any section, paragraph, sentence, clause, phrase, word, map, diagram, or any other
45 item contained in this Ordinance is for any reason held by the Court to be unconstitutional,

1 inoperative, void, or otherwise invalid, such holding shall not affect the remainder of this
2 Ordinance.

3 **Section 4. Providing for a Savings Clause**

4 All development orders, permits, enforcement orders, ongoing enforcement actions, and
5 all other actions of the Board of County Commissioners, the Zoning Commission, the
6 Development Review Officer, Enforcement Boards, all other County decision-making and
7 advisory boards, Special Masters, Hearing Officers, and all other County officials, issued
8 pursuant to the regulations and procedures established prior to the effective date of this
9 Ordinance shall remain in full force and effect.

10 **Section 5. Interpretation of Captions**

11 All headings of articles, sections, paragraphs, and sub-paragraphs used in this Ordinance
12 are intended for the convenience of usage only and have no effect on interpretation.

13 **Section 6. Inclusion in the Unified Land Development Code**

14 The provisions of this Ordinance shall be codified in the Unified Land Development Code
15 and may be reorganized, renumbered or re-lettered to effectuate the codification of this
16 Ordinance.

17 **Section 7. Providing for an Effective Date**

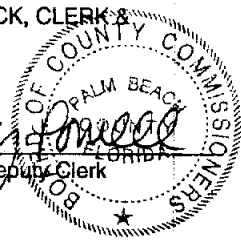
18 The provisions of this Ordinance shall become effective upon filing with the Department of
19 State.

20
21 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach

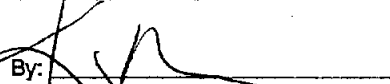
22 County, Florida, on this the 27th day of January, 2011.

SHARON R. BOCK, CLERK &
COMPTROLLER

By: 
Deputy Clerk



PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

By: 
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

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EFFECTIVE DATE: Filed with the Department of State on the 4th day of

February, 2011.

EXHIBIT F

**PAIN MANAGEMENT CLINICS
SUMMARY OF AMENDMENTS**

- 1
2 **Part 1. ULDC, Art. 1.1.2.P.1, Pain Management Clinic [Related to definitions] (page 78 of 114),**
3 **is hereby amended as follows:**
4
5 **CHAPTER I DEFINITIONS & ACRONYMS**
6 **Section 2 Definitions**
- 7 **P. Terms defined herein or referenced Article shall have the following meanings:**
8 1. **Pain Management Clinic** – all privately owned pain management clinics, facilities, or offices,
9 which advertise in any medium for any type of pain management services, or employ a
10 physician who is primarily engaged in the treatment of pain by prescribing or dispensing
11 controlled substance medications, and are required to register with the Florida Department of
12 Health pursuant to Sec. 458.3265, Florida Statutes, as may be amended, regardless of
13 whether such registration is pending, denied or revoked 458.309 or Sec. 459.005, FL Stat.
14 (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing
15 controlled substance medications when the majority of the patients seen are prescribed or
16 dispensed controlled substance medications for the treatment of chronic nonmalignant pain.
17 Chronic nonmalignant pain is pain unrelated to cancer which persists: 1) beyond the usual
18 course of the disease or the injury that is the cause of the pain; or 2) more than 90 days after
19 surgery. **[Ord. 2010-009]**
20
21
- 22 **Part 2. ULDC, Art. 4.B.1.A, Definitions and Supplementary Standards for Specific Uses (pages**
23 **68 of 161), is hereby amended as follows:**
24
25 **CHAPTER B SUPPLEMENTARY USE STANDARDS**
26 **Section 1 Uses**
- 27 **A. Definitions and Supplementary Standards for Specific Uses**
28
29 **91.1 Pain Management Clinic**
30 All privately owned pain management clinics, facilities, or offices, which advertise in any
31 medium for any type of pain management services, or employ a physician who is primarily
32 engaged in the treatment of pain by prescribing or dispensing controlled substance
33 medications, and are required to register with the Florida Department of Health pursuant to
34 Sec. 458.3265, Florida Statutes, as may be amended, regardless of whether such
35 registration is pending, denied or revoked 458.309 or Sec. 459.005, FL Stat. (2009). A
36 physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled
37 substance medications when the majority of the patients seen are prescribed or dispensed
38 controlled substance medications for the treatment of chronic nonmalignant pain. Chronic
39 nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the
40 disease or the injury that is the cause of the pain beyond the usual course of the disease or
41 the injury that is the cause of the pain or more than 90 days after surgery.
42 **a. Moratorium**
43 1. The BCC Board of County Commissioners of Palm Beach County does hereby
44 impose a moratorium beginning April 2, 2010 on the effective date of this ordinance,
45 upon the acceptance of zoning applications and all applicable requests for zoning
46 approval for pain management clinics.
47 2. This Ordinance shall expire upon the earlier of the following: October 3, 2011, one
48 year from the effective date of this ordinance or upon the effective date of ULDC
49 Unified Land Development Code amendments dealing with pain management clinics
50 to be considered by the BCC Board of County Commissioners during the moratorium.
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Notes:

Underlined language indicates proposed new language.

~~Language crossed-out~~ indicates language proposed to be deleted.

.... (ellipses) indicates language not amended which has been omitted to save space.

Relocated language is shown as *italicized* with reference in parenthesis.



BTR# _____

**Affidavit
Medical or Dental Office
Palm Beach County Zoning Division
Palm Beach County Unified Land Development Code, Art. 4.B.1.A**

Moratorium:

On March 31, 2010, Palm Beach County adopted a Pain Management Clinic Moratorium through Ordinance 2010-09. Zoning applications and all applicable requests for Zoning approvals for Pain Management Clinics will not be approved until the moratorium ends. In order to comply with the moratorium, applicants for Medical or Dental Offices must demonstrate they are not and will not operate as Pain Management Clinics based on the following definitions:

Medical or Dental Office: - an establishment where patients, who are not lodged overnight, are admitted for examination or treatment by persons practicing any form of healing or health-building services whether such persons be medical doctors, chiropractors, osteopaths, chiropractors, naturopaths, optometrists, dentists, or any such profession, the practice of which is lawful in the State of Florida.
A pain management clinic shall not be considered a medical or dental office.

Pain Management Clinic – all privately owned pain management clinics, facilities, or offices, which advertise in any medium for any type of pain management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and are required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, FL Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists: 1) beyond the usual course of the disease or the injury that is the cause of the pain; or 2) more than 90 days after surgery.

AFFIDAVIT OF AGREEMENT

I have read the above definitions for a Medical or Dental Office; and Pain Management Clinic. I clearly understand the uses are separate and distinct uses. I am aware that the Business Tax Receipt I am applying for is only that of a Medical or Dental Office; not a Pain Management Clinic. I am also aware of my responsibilities for the use of Medical or Dental Office on the property; and further understand that any violation of this affidavit and/or operation of a pain management clinic at the business address contained in this affidavit may be a violation of the Zoning in Progress or Moratorium and may result in code enforcement action and/or revocation of the Business Tax Receipt.

Physician or
Operating Corporation Representative: _____

Business
Name: _____

Business Address: _____ Suite/Bay# _____

Occupation: _____

Signature of Applicant: _____ Date _____

NOTARY PUBLIC INFORMATION:

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
by _____ (name of person acknowledging). He/she is personally known
to me or has produced (type of identification) _____ as identification and
did/did not take an oath (circle correct response).

(Name - type, stamp or print clearly)

(Signature)

My Commission Expires on: _____

NOTARY'S SEAL OR STAMP

Report of the Pain Management Clinic Subcommittee of IPARC

July 14, 2010

Following the April 29, 2010 meeting of the Executive Committee and Issues Forum, a subcommittee of IPARC was established to review the recently adopted state legislation with regard to pain management clinic regulation and provide recommendations on addressing this issue in Palm Beach County. The subcommittee consisted of the following IPARC members: Thomas Lanahan, Chair, City of Greenacres; Michael Rumpf, City of Boynton Beach; Paul Dorling, City of Delray Beach; and Charles Wu, City of West Palm Beach. In addition, Monica Cantor, Palm Beach County Zoning Division served as a representative of Palm Beach County. The group also received information from Sergeant Brady Meyers, Delray Beach Police Department, who serves on the Palm Beach County Sheriff's Office Task Force for this issue.

From the subcommittee members' review of the Broward County Grand Jury Report of November 19, 2009, newspaper reports, recent Florida Statute changes contained in CS/CS SB 2272, and the group's discussion with Sergeant Brady Meyers, the subcommittee determined that over the past year Palm Beach County has been experiencing a rapid increase in the number of businesses operating as "Pain Management Clinics" wherein large quantities of Schedule II, III, and IV narcotics are prescribed and dispensed to patients visiting the clinics. Some patients will visit multiple clinics over 1 or more days, obtaining large quantities of pills at each location without each doctor's knowledge since there is currently no way to track this activity. In many cases, these medicines are then sold or bartered to other persons for illegal distribution. This activity fuels addiction and has attracted people to South Florida, including Palm Beach County, from as far away as Kentucky to obtain such drugs for illegal distribution in their home state.

These activities create excessive traffic, loitering, attraction of criminals seeking to exploit addicts, and thefts to pay for the medication to feed the addiction.

Communitywide, there are negative impacts on the health care and criminal justice systems in handling the injuries, overdoses, and criminal acts that are caused. These negative impacts are a threat to the health, safety, and welfare of the County.

As currently adopted, Florida Statutes do not fully address this issue and will take too long to implement since last year's statewide database is not funded and not operational and this year's changes will not start until October 1, 2010 and not reach full operation until January 1, 2012.

The subcommittee recognizes that zoning alone cannot effectively address this serious problem, which is affecting the South Florida region, and that a coordinated inter-jurisdictional approach between planning departments, law enforcement, and code enforcement is essential to collectively tackle this societal problem.

To effectively address this issue in Palm Beach County, the subcommittee finds that a consistent approach should be undertaken countywide, including the following features:

1. Amend zoning regulations to prohibit 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 or 893.0355, Florida Statutes, in excess of a one-time 72-hour emergency resupply or unless otherwise expressly permitted by law. The 72-hour standard is consistent with Florida Statutes and has also been found to be reasonable in communities in South Florida that have established such a restriction already.
2. Consider the regulation of pharmacies to ensure that they operate legitimately (such as that all dispensing is to be done by a state licensed pharmacist and that no more than a maximum of 25% of sales revenue may come from the sale of Schedule II drugs) and are not established in conjunction with, or in close proximity to, pain management clinics merely to avoid the restrictions in #1 above.
3. Make the improvement and funding of the state's prescription drug database (authorized last year but not funded) a Palm Beach County legislative priority for next year's state legislative session. The state database needs to be enhanced to have a reasonable update requirement (current 15 days to make updates is too long to be effective) and to mandate that doctors check it before prescribing or dispensing (currently voluntary).
4. In the event the state is unwilling to act, explore establishing a prescription drug database for Palm Beach County. This could possibly be done through the Health Care District of Palm Beach County.
5. Monitor the work of the Broward County Pain Management Clinic Task Force and regroup the IPARC subcommittee in September when the Task Force's zoning recommendations are completed. The subcommittee should include a representative from the Palm Beach County Sheriff's Office Task Force. Jurisdictions in Broward as well as the City of Tampa and Hillsborough County have adopted or are currently considering the following:
 - a. Prohibitions or limitations on on-site dispensing.
 - b. Parking studies to be provided with new pain management clinic applications.
 - c. Periodic reporting standards and very detailed permit application requirements.
 - d. Hours of Operation limitations.

- e. Prohibitions against operating “Cash Only”.
- f. Amortization of existing clinics.
- g. Distance separation between pain management clinics.
- h. Size limitations.
- i. Conditional / Special Exception use approval requirements.
- j. Medical Director on-site, Medical Director to be Board Certified in Pain Management.

Not all jurisdictions have adopted all of these items and some have adopted only 1 or 2 of them. The issue is still very fluid in Broward County just as in Palm Beach County.

Jeffrey J. Newton
County Attorney




OFFICE OF THE COUNTY ATTORNEY
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

954-357-7600 • FAX 954-357-7641

May 26, 2010

MEMORANDUM

TO: Pain Management Clinic Task Force

FROM: Jose R. Gonzalez, Deputy County Attorney 

RE: **Local Government Regulation of Pain Management Clinics**

This memorandum answers a number of inquiries raised at the May 13, 2010, Pain Management Clinic Task Force meeting and provides a general overview of areas where local government may regulate pain management clinics.

Preemption and Conflict with State Law

Counties and municipalities have broad authority to enact ordinances not inconsistent with general law. However, a county or municipal ordinance is null and void if the subject area has been preempted by the State or directly conflicts with a State statute. Preemption takes a topic or a field and reserves that topic for regulation exclusively for the legislature. The Florida Department of Health regulates the practice of medicine in Florida through the Board of Medicine and the Board of Osteopathic Physicians.

The statutes establishing the State regulation of the practice of medicine do not appear to explicitly preempt local governments from regulating the practice of medicine. Nonetheless, the comprehensive regulation of the practice of medicine in Florida may be interpreted so as to effectively preempt local regulation of the subject.¹ For example, the Florida Attorney General has opined that municipalities have no authority to place any additional regulatory requirements on abortion clinics and are limited to controlling

¹ Under the Florida Constitution, the legislature may not enact a special law or general law of local application pertaining to the regulation of occupations that are regulated by a state agency. Florida Constitution, Art. III, Sec.

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May 26, 2010
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the location of such clinics through reasonable zoning ordinances. The Attorney General found that the provisions of the State statutes dealing with the regulation of abortion clinics demonstrate a legislative intent to preempt the subject of regulation and licensing of abortion clinics in the State of Florida, and thus, prohibit additional regulation by local governments in this area.

There is a risk that local government regulation of the practice of medicine in pain clinics may be similarly prohibited as preempted to the State. Even if there is no preemption, given the broad regulation of the practice of medicine by the State, any conflict with State law would render local regulations invalid. Similar issues exist with respect to the practice of pharmacy which is also comprehensively regulated by the State.

Local Government Regulation

Local governments have broad police powers to adopt legislation in the interest of public health, safety, and welfare. This includes the power to establish and enforce zoning and such business regulations as are necessary for protection of the public. However, these powers must be executed within the limits of the U.S. and Florida Constitutions, and Federal and State law. Such legislation must not be unreasonable, arbitrary, or capricious, and the means employed by the legislative body must have a real and substantial relationship to the object sought to be obtained. Although the validity of a particular legislative requirement is case specific, the following types of regulations have been upheld:

- Limitations on the hours of operation of certain types of businesses.
- Distance requirements between business establishments.
- Distance requirements between a type of business establishment and a school or day care center.
- Minimum number of square feet for a business establishment or a part of an establishment.
- Special zoning areas for certain types of business establishments.
- Requiring a zoning board to grant a special exception for operation of certain types of establishments in certain zoning areas.

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- Parking requirements for certain types of business establishments.

Generally, zoning ordinances are operative prospectively, from their effective date. To the extent that a zoning change is applied retroactively, such retroactive application may constitute an unconstitutional taking and require compensation of the property owner.² In some instances, amortization provisions can be implemented to provide a grace period for nonconforming uses. However, such provisions raise issues concerning the individual's vested interest in property, the proper period for amortizing the use, and the process of weighing the individual's costs against society's benefits. In some cases, amortization provisions have been upheld if the amortization period was reasonably long enough to allow the property owners to recoup their investment.

Advertising

Local governments may regulate otherwise lawful advertising as to the size and location of the advertisements. However, regulations that limit the content of such advertisements may face difficult First Amendment hurdles.

A local government may enact content neutral regulations regarding advertising to the extent such regulations: (1) are justified without reference to the content of the regulated speech; (2) are narrowly tailored to serve a significant governmental interest; and (3) leave open ample alternative channels for communication of the information. Thus, regulations that restrict the size or location of advertisements for the governmental purpose of improving traffic safety have generally been upheld by the courts.

To the extent a local government enacts a content-based regulation of advertising, such a regulation would need to be carefully considered since numerous court decisions have overturned such regulations. To determine whether such a regulation of commercial speech is constitutional, a court would need to determine whether: (1) the affected speech concerns lawful activity and is not misleading, and thus is protected by the First Amendment; (2) the government's asserted interest in regulating the speech is substantial; (3) the regulation directly advances the asserted interest; and (4) the regulation restricts no more speech than necessary to serve the asserted interest. The

² Additionally, the Bert J. Harris, Jr. Private Property Rights Protection Act provides in part that when a specific action of a governmental entity has inordinately burdened an existing use of real property, the owner of the real property is entitled to relief that may include compensation for the actual loss to the fair market value of the property caused by the government action. This cause of action is separate and distinct from any cause of action that might arise under the law of takings.

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local government bears the burden of identifying the substantial interest and justifying the challenged restriction.

Moratoria

Moratoria are used by local governments to preserve the status quo, while formulating a more permanent regulation strategy. If a local government enacts a moratorium, potential challenges could be based on whether the moratorium constitutes a taking. The most common constitutional challenge to a moratorium is that the delay in going forward with a project constitutes a temporary taking. In order to withstand a taking's challenge, a regulation must substantially advance legitimate government interests, and such regulation cannot deny an owner the economically viable use of his or her property. However, the Fifth Amendment prohibition against a taking without just compensation does not guarantee the highest and best use of property, only an economically viable use of property.

Faced with a moratorium challenge, the courts often focus on three (3) principal issues in addition to the traditional taking issues. The three (3) issues are:

- (1) The facts and circumstances necessitating the moratorium;
- (2) The duration of the moratorium; and
- (3) The process for preparing a plan of action in response to the issue necessitating the moratorium.

We are not aware of any Florida case law addressing moratoria on pain management clinics. However, the Interim Report of the Broward County Grand Jury regarding the "The Proliferation of Pain Clinics in South Florida," dated November 19, 2009 set out facts which would provide some support for a moratorium. It provided eighteen (18) steps to clean up Florida's "Pill Mills" and referenced State legislation that established a Prescription Drug Monitoring Program which was enacted in July 2009 and is scheduled to be implemented by December 1, 2010.

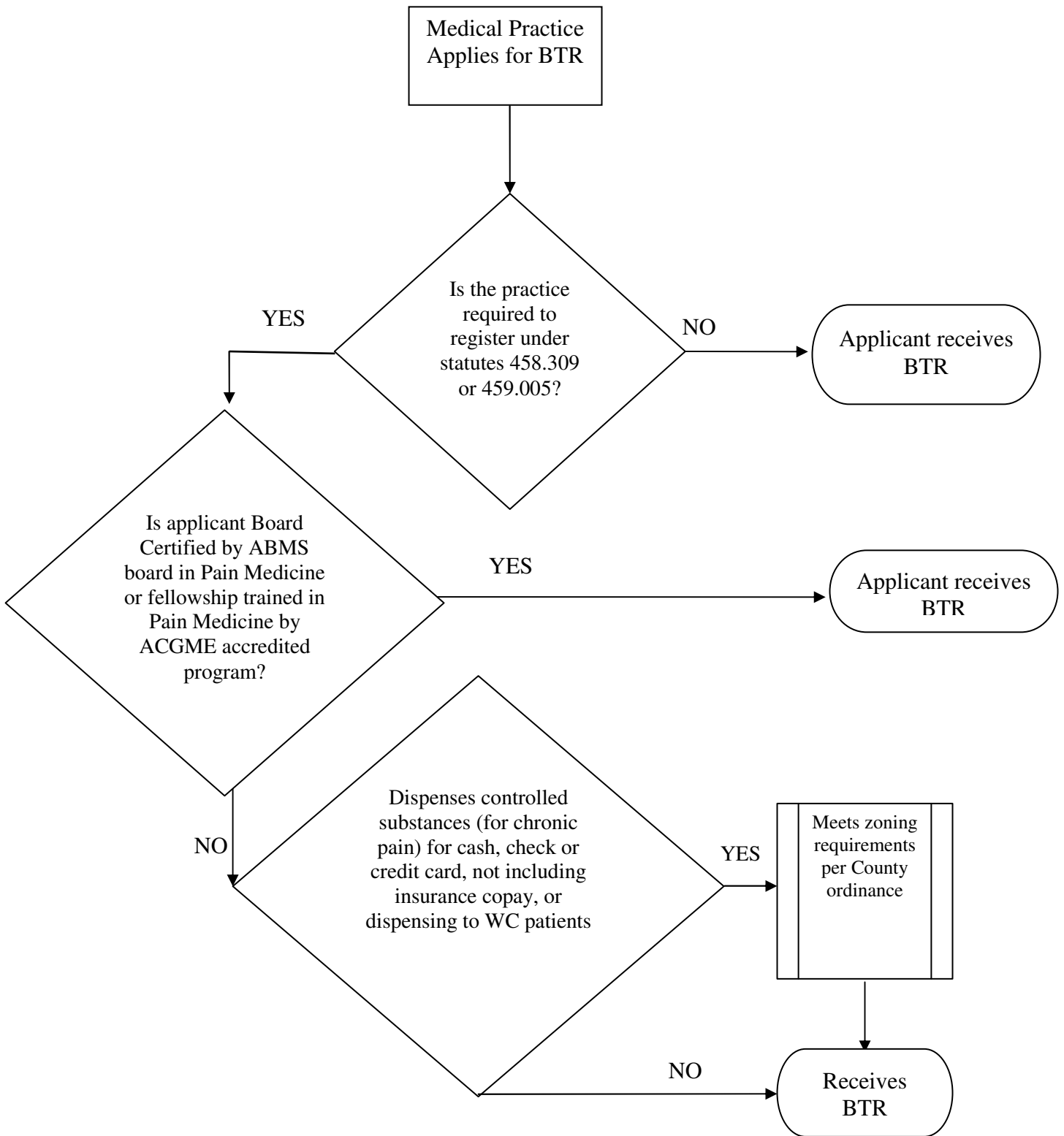
Thus, local governments in Broward County may adopt a moratorium ordinance regarding new pain management clinics, subject to constitutional limitations regarding takings. The local government would need to establish facts and circumstances supporting the moratorium, have a process for responding to the issues necessitating

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the moratorium, and limit the duration of the moratorium in accordance with such process.

Countywide Options

To the extent that the County and the municipalities in Broward County are unable to enact ordinances that create consistent regulation of pain management clinics throughout the County, there are other options available to achieve such consistent regulation. One possibility is that the Broward County Charter could be amended to provide that County ordinances relating to the regulation of pain management clinics would supersede any municipal ordinance regulating pain management clinics.



Pain Management Clinic Regulations

<u>Dania Beach</u>	
<u>Parking</u>	Any parking demand created by a pain management clinic shall not exceed the supply of parking spaces legally available within the shared guest or visitor parking areas allocated on the site as required by Section 6.20 of this Code. An applicant may be required to demonstrate that on-site traffic flow and parking will be sufficient to accommodate parking demands generated by the pain management clinic based on a current traffic and parking study prepared by a certified professional, if requested by the City.
<u>Non-Conforming Use</u>	Any application for a Certificate of Use for a business operating as a pain management clinic prior to April 28, 2009 shall be subject to zoning regulations in effect prior to the effective date of this Ordinance. Any such clinic legally in existence prior to the effective date of this Ordinance, but now in violation of its provisions, shall be considered a legal nonconforming use.
<u>On-Site Dispensing</u>	On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes, unless otherwise expressly permitted by statutory or general law, is prohibited.
<u>Zoning</u>	Multiple sections of the zoning code were amended to <u>include</u> medical offices and pain management clinics in the <u>prohibited</u> uses sections of certain zoning districts. Also, multiple sections of the zoning code were amended to <u>exclude</u> medical offices and pain management clinics in the <u>permitted</u> uses sections of certain zoning districts.
<u>Zoning Relief</u>	In order to address possible unintended violations of federal and state laws, subsequent to implementation of this Code or its related rules, policies, and procedures in advance of costly litigation, zoning relief may be granted pursuant to this section.
<u>Deerfield Beach</u>	
<u>Distance</u>	No pain management clinic shall be permitted to be located within 1,000 feet of another pain management clinic. For purposes of establishing the distance between pain management clinics an applicant shall provide a certified survey from a registered surveyor demonstrating the distance between the proposed pain management clinic and another other pain management clinic in the city.
<u>Non-Conforming Use</u>	Any pain management clinic legally in existence prior to the effective date of this Ordinance but now in violation of its provisions, shall be considered a legal nonconforming use for a period of two (2) years from the effective date of this Ordinance. After the two (2) year period of time, such use shall be discontinued.
<u>On-Site Dispensing</u>	Pain management clinics are prohibited from on site dispensing of controlled substances that are identified in Schedules II, III, or IV in Sections 893.03, 893.035, or 893.0356 Florida Statutes unless otherwise expressly permitted by law. The following are exempt from this prohibition:
	(1) 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.
	(2) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
<u>Zoning</u>	Pain management clinics shall be a conditional use in the B-3 zoning district and shall be considered a prohibited use in every other zoning district.
<u>Delray Beach</u>	
	On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, and as further amended by Sections 893.035 or 893.03655, Florida Statutes, is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:
	(i) 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.
	(ii) 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.
	(iii) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.
	(iv) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
	(v) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

Pain Management Clinic Regulations

Hallandale Beach	
<u>Parking</u>	Any parking demand created by a pain management clinic shall not exceed the supply of parking spaces legally available within the shared guest or visitor parking areas allocated on the site as required by Section 32-455. An applicant may be required to demonstrate that on-site traffic flow and parking will be sufficient to accommodate parking demands generated by the pain management clinic based on a current traffic and parking study prepared by a certified professional, if requested by the City.
<u>Non-Conforming Use</u>	Pain management clinics, in existence prior to the effective date of this Ordinance, but now in violation of subsection (1) of this section, shall be required to terminate the on-site dispensing of controlled substances and be brought into full compliance with this section within eighteen (18) months of the date of adoption of this Ordinance.
<u>On-Site Dispensing</u>	On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes, unless otherwise expressly permitted by federal or state law, is prohibited. The following is specifically exempt from this prohibition:
	(1) A health care practitioner's epidural injection of a controlled substance in an amount adequate to treat the patient during that particular treatment session.
<u>Disclosure</u>	Pain management clinics, as defined in Section 32-8, shall, at the time of annual payment of the business license tax, provide a statement as to the existence and status of any pending or completed disciplinary actions by The Department of Health or any Board authorized pursuant to Section 456.072, Florida Statutes, concerning the clinic or any persons employed by the clinic and provide a copy of any registration required by the Department of Health pursuant to 458.309(4) and 459.005(3).
	Each month during the term of a license, each licensee shall supply the city with the following information, such information to be provided on the form and in the manner prescribed by the city:
	(1) A statement of the names of all employees of the licensee.
	(2) A statement as to whether any arrests have occurred upon the licensed premises and if so, the dates of such arrests, the persons arrested and the offense with which each of those persons was charged.
	(3) Any material change in any of the information required pursuant to the original application for the license
	(4) The violation of any of the terms and conditions of this division or the violation of any ordinance of the city or county, or the violation of any of the laws of the State or the United States as they pertain to the conduct of the licensed business shall be cause for revocation of the license pursuant to Section 18-40 of the City's Code of ordinances by clear and convincing evidence.
<u>Zoning Relief</u>	In order to address possible unintended violations of federal and state laws, subsequent to implementation of this Chapter in advance of costly litigation, zoning relief may be granted pursuant to this section.
Hollywood	
<u>On-Site Dispensing</u>	On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes, unless otherwise expressly permitted by statutory or general law, is prohibited.
<u>Parking</u>	Any parking demand created shall not exceed the supply of parking spaces legally available within the shared guest or visitor parking areas allocated on the site a required by the Zoning and Land Development Regulations. An applicant may be required to demonstrate that on-site traffic flow and parking will be sufficient to accommodate parking demands generated based on a current traffic and parking study prepared by a certified professional, if requested by the City.
<u>Non-Conforming Use</u>	Any business legally in existence prior to the effective date of this Ordinance, but now in violation of its provisions, shall be considered a legal nonconforming use.
<u>Zoning</u>	Multiple sections of the zoning code were amended to <u>include</u> medical offices and pain management clinics in the <u>permitted</u> uses sections of certain zoning districts. The newly amended zoning districts state that pain management clinics cannot exceed 50% of the total floor area of the building.
<u>Zoning Relief</u>	In order to comply with federal and state laws in implementing this Code and to avoid the possibility of costly litigation, zoning relief from this Code may be granted by the City Commission pursuant to this Section. This zoning relief shall include, but not be limited to, reasonable accommodations under the Fair Housing Act and Americans with Disabilities Act.
Pembroke Pines	
<u>Board Certified Requirement</u>	All medical directors and/or medical practitioners employed at pain management clinics operating within the City shall be board certified in Pain Medicine or Anesthesia by a board approved by the American Board of Medical Specialties or any other board-approved specialty organization approved by the Board of Medicine/Board of Osteopathic Medicine and as set forth in Rule 64B8-11001(8), F.A.C., and 64B15-14.001, F.A.C., as may be amended from time to time; recognized by the Florida Boards of Medicine and Osteopathic Medicine; or has successfully completed a post-graduate training program in Pain Medicine/Management accredited by the Accreditation Council for Graduate Medical Education/American Osteopathic Association, College of Family Physicians of Canada, or Royal College of Physicians and Surgeons in Canada.

Pain Management Clinic Regulations

<u>Pompano Beach</u>	
<u>On-Site Dispensing</u>	The following shall be prohibited in medical office or professional offices within ever zoning district: (a) On-site dispensing of controlled substances that are identified in Schedule II, III or IV in Section 893.03, 893.035, or 893.0356, Florida Statutes, in medical office, business offices or professional offices unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition: (1) 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 session. (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 the 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 a controlled substance to a patient.
<u>Tampa</u>	
<u>Permit</u>	Detailed permit with various disclosure requirements. The grant of a permit is expressly conditioned upon compliance with the following operational standards: (1) The permit must be posted in a conspicuous place at or near the entrance to the Pain Management Clinic so that it may be easily read at any time. (2) The Pain Management Clinic shall not limit the form of payment for services or prescriptions to cash only. (3) The Pain Management Clinic shall be operated by the Medical Director. (4) The hours of operation of the Pain Management Clinic shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Saturday. (5) The Pain Management Clinic shall maintain the diagnostic equipment to diagnose and treat patients complaining of chronic pain as provided for by the appropriate standard of care. (6) The Medical Director shall secure prescription pads so that only authorized persons may access them. All prescription pads shall contain the name of the Pain Management Clinic and the Pain Management Clinic permit number.
<u>Wellington</u>	
<u>Distance</u>	Pain Management Clinics cannot be located within 1,500 feet of a licensed pharmacy.
<u>Size Restrictions</u>	Pain Management Clinics shall be at least 1,500 square feet in size.
<u>Zoning</u>	Article 6 "Zoning District" of the Wellington Land Development Regulations is hereby amended by amending Table 6.4.1 to provide that pain management clinics are a conditional use in the Medical Arts Planned Development District, Medical Center Planned Development District, Mixed Use Planned Development District, Multiple Use Planned Development District and Community Commercial District and are prohibited in all other districts listed within that table and Table 6.8.1 is hereby amended to reflect that pain management clinics are prohibited within all land use zones and categories contemplated by that Table.
<u>Medical Director Requirements</u>	The Pain Management Clinic must have a Director of Medicine who is a physician duly actively licensed by the State of Florida. The Pain Management Clinic must provide the name and address of its Medical Director to the Wellington Growth Management Department and advise the Department within 30 days of any change in who the Medical Director is and once again provide them with the name and address and contact information for the Medical Director. The Medical Director must maintain regular hours at the Pain Management Clinic and be available at the Clinic's Wellington office at least two days a week.
<u>Annual Report</u>	The Pain Management Clinic must submit an annual report to the Wellington Growth Management Department, documenting compliance with the Supplementary Use Standards and any other conditions of approval that may be attached to the granting of the Conditional Use approval.
<u>Weston</u>	
<u>On-Site Dispensing</u>	Florida Statutes §§ 893.03, 893.035 or 893.0355, Schedules II, III, or IV, unless otherwise expressly permitted by law.

Pain Management Clinic Regulations

Hillsborough County	
Application	Detailed application procedure with various disclosure requirements.
License Requirements	Below are some of the license requirements:
	(1) The pain management clinic shall not limit the form of payments for services, prescriptions or drugs to cash only.
	(2) The hours of operation of the pain management clinic shall be limited to 9:00am to 7:00pm., Monday through Friday and 9:00am to 5:00pm on Saturday.
Palm Beach County	
Parking	1 space per 200 sq. ft.
Pinellas County	
Registration	(a) Beginning thirty (30) days after the effective date of this Ordinance and throughout the period of the moratorium imposed by this Ordinance, no Pain Management Clinic, unless otherwise exempted, shall operate in Pinellas County by any means without having been issued a Pain Management Clinic permit by the Department.
	(b) The Department shall maintain a database of registered Pain Management Clinics operating in Pinellas County.
	(c) Proof of registration shall be prominently displayed in the common public area of the Pain Management Clinic.
Application	Any Pain Management Clinic operating in Pinellas County shall file a sworn application created by the Department, which shall contain the following information:
	(1) Proof that the applicant has registered with the State Department of Health as of the effective date of this Ordinance as required by Sec. 458.309 or 459.005, Fla. Stat. (2009), or any successor state law; and
	(2) A copy of the applicant's State application form, including all information required for the Florida Department of Health registration; and
	(3) A sworn statement attesting to the veracity and accuracy of the information provided in the application.

Pain Management Clinic Definition Types

<u>Municipality</u>	<u>Ordinance / Legislation Type</u>	<u>Definition Type (A-I)</u>
Bradenton	Moratorium	I
Coconut Creek	Moratorium	No Defined Term
Cooper City	Moratorium	N/A
Coral Springs	Moratorium	No Defined Term
Dania Beach	Zoning, On-site dispensing, Parking, Non-conforming use	F
Davie	Moratorium	No Defined Term
Deerfield Beach	Zoning, On-site dispensing, Distance requirements, Non-conforming use	D
Delray Beach	On-site dispensing	No Defined Term
Doral	Moratorium	A
Fort Lauderdale	Moratorium	D
Green Acres	Moratorium	A
Hallandale Beach	Zoning, On-site dispensing, Parking, Non-conforming use, Disclosures	H
Hollywood	Zoning, On-site dispensing, Parking, Non-conforming use	F
Jupiter	Moratorium	A
Lake Park	Moratorium	A
Lake Worth	Moratorium	A
Loxahatchee Grove	Moratorium	A
Margate	Moratorium	G
Miami Gardens	Moratorium	N/A
North Lauderdale	Moratorium	D
North Palm Beach	Moratorium	A
Oakland Park	Moratorium	D
Pembroke Pines	Board certified requirement	D
Plantation	Moratorium	D
Pompano Beach	On-site dispensing	No Defined Term
Sunrise	Moratorium	N/A
Tamarac	Moratorium	D
Tampa	Permits, Hours of Operation, Inspection	E
Vero Beach	Moratorium	N/A
Wellington	Zoning, Moratorium	A
West Palm Beach	Moratorium	A
Weston	On-site dispensing	F
<u>County</u>		
Broward County	Moratorium	D
Hillsborough County	License, Hours of Operation, Inspection	C
Palm Beach County	Zoning, Parking, Moratorium	A
Pinellas County	Application, Inspection	A
<u>State</u>		
Florida	Registration, Inspection, Advertising, On-site dispensing	B

Pain Management Clinic Definition Types

A. (Doral, Green Acres, Lake Park, Lake Worth, Loxahatchee, Grove Jupiter, North Palm Beach, Palm Beach County, Pinellas County, Wellington, West Palm Beach)

A privately owned pain-management clinic, facility or office, which advertises in any medium for any type of pain-management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and is required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, Fla. Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain for more than ninety (90) days after surgery.

B. (Florida)

All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which advertise in any medium for any type of pain-management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department unless:

1. That clinic is licensed as a facility pursuant to chapter 395;
2. The majority of the physicians who provide services in the clinic primarily provide surgical services;
3. The clinic 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 exceeded \$50 million;
4. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or
6. The clinic is owned by a corporate entity exempt from 5 federal taxation under 26 U.S.C. s. 501(c)(3).

A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain or more than 90 days after surgery.

C. (Hillsborough County)

Any privately owned pain management clinic, facility or office which advertises in any medium for any type of pain management services, or which employs a physician who is primarily engaged in the treatment of pain, and is required to register with the Florida Department of Health pursuant to Florida Statutes Sections 458.309 or 459.005. Also included in this definition are centers designating themselves as a pain research center and, which may or may not be required to be registered with the State even though controlled substance medications are dispensed or prescribed to patients. Pain management clinic does not include clinics:

1. Licensed as a facility pursuant to Florida Statutes Chapter 395;
2. Where the majority of the physicians who provide services in the clinic primarily provide surgical services;
3. 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 exceeded \$50 million;
4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. That do not prescribe or dispense controlled substances for the treatment of pain; or
6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c)(3) or (4).

For the purposes of this Ordinance, a physician will be considered primarily engaged in the treatment of pain, by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain.

D. (Broward County, Deerfield Beach, Fort Lauderdale, North Lauderdale, Oakland Park, Pembroke Pines, Plantation, Tamarac)

Any clinic, medical office, or medical practitioner's office that is not affiliated with a hospital, hospice, or other facility for the treatment of the terminally ill and having at least one of the following criteria:

- a. The primary business purpose of such clinic, medical office, or medical practitioner's office is to prescribe or dispense pain medication, identified in Schedules II, III, and IV in Sections 893.03, 893.035, and 893.0355, Florida Statutes, such as, but not limited to, opioids including fentanyl, hydrocodone, morphine, and oxycodone to individuals; or
- b. The clinic, medical office, or medical practitioner's office holds itself out through advertising as being in business to prescribe such pain medication, as described in subsection a. of the criteria above, and which may or may not provide dispensing of pain medication on site.

E. (Tampa)

A privately owned clinic, facility or medical office that advertised in any medium for any type of pain management services and/or employs one or more physicians who are primarily engaged in the treatment of pain. For the purposes of this Division 11, a physician shall be considered primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medication when the majority of the patients seen are prescribed or dispensed controlled substance medication for the treatment of chronic nonmalignant pain. Registration with the Florida Department of Health pursuant to Florida Statutes Section 458.309(4), (5) and (6) or Florida Statutes Section 459.005(3), (4) and (5) shall be prima facie evidence of operating as a Pain Management Clinic pursuant to this definition. Expressly exempted from this definition are hospitals, nursing homes, ambulatory surgical care centers, hospice or intermediate care facilities for the disabled, or clinics which are affiliated with an accredited medical school at which training is provided for medical students, residents or fellows.

Chronic Nonmalignant Pain means pain unrelated to cancer which persists beyond the usual course of the disease or injury that is the cause of the pain for more than ninety (90) days after surgery.

F. (Dania Beach, Hollywood, Weston)

A type of medical office providing a variety of personal services by an on-site physician who is currently licensed by either the Florida Board of Medicine or Board of Osteopathic Medicine and his or her staff, which, individually or collectively, are intended to reduce or manage pain.

G. (Margate)

Any pain management center/clinic/facility where the primary focus or concentration of which is the prescribing and/or dispensing of pain medication to individuals with complaints of pain, chronic or otherwise, which facility is unaffiliated with any hospital, hospice and/or facility for the treatment of the terminally ill in Broward or Palm Beach County, Florida.

H. (Hallandale Beach)

A type of medical clinic or medical office which is not affiliated with any hospital, hospice or other facility for treatment of substance abuse or of the terminally ill, and provides services by a health care practitioner, which, individually or collectively, are intended to reduce or manage pain through prescription of or dispensing of controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes.

I. (Bradenton)

A privately owned pain-management clinic, facility or office, which advertises in any medium for any type of pain-management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and is required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, Fla. Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain for more than ninety (90) days after surgery.

In determining whether a clinic, medical practitioner's office or pharmacy is a pain clinic or pain management clinic, the Director of Planning and Community Development may also consider the following: whether major medical insurance accepted; whether the owner is a physician; whether the medical director is board certified in pain medicine; whether the owner is convicted of or has plead guilty or nolo contendere to an offense that constitutes a felony, or a misdemeanor the facts of which relate to the distribution or illegal prescription of a narcotic; and the percentage of patients residing out of state.

ORDINANCE NO. 50-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION (LLLL), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

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

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 illegal 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, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 21, 2009 and voted 7 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, 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 City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

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

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

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended to read as follows:

BUSINESS OFFICE Any commercial activity conducted primarily in an office, which does not involve the sale of commodities or goods on the premises. This definition does not include a Medical Office.

MEDICAL OFFICE shall mean a facility providing services to the public by physicians, dentists, surgeons, chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, (who are also know as health care practitioners) or others who are duly licensed to practice their respective 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.

PHARMACY shall mean a retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc.

PROFESSIONAL OFFICES includes those vocations in which professed attainments in special knowledge are practiced, as distinguished from mere skills, and shall be limited to those professions so classified by the Laws of Florida, and which are conducted as professions and not as a trade or other business. PROFESSIONAL OFFICES do not include offices for the treatment of animals on the premises. This definition does not include a Medical Office.

Section 3. That Section 4.3.3, "Special Requirements for Specific Uses", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended by enacting Subsection 4.3.3 (LLL), "Medical Offices", to read as follows:

(LLL) Medical Offices:

(1) Applicability. Medical Offices shall be subject to the following:

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

(i) 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.

(ii) 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.

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

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

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

(2) Appeal. An appeal from an administrative determination or board action, excluding the granting or denial of a variance, regarding Medical Offices shall be appealed to the City Commission. The applicant shall follow the procedures and requirements set forth in Section 2.4.7(E). In addition to the requirements listed in Section 2.4.7(E) the applicant shall also list the following:

(a) If the applicant is a potential claimant under a federal or state law; and

(b) That the applicant believes in good faith that the City through implementation of this section has intentionally or unintentionally violated federal or state law. The law(s) the City has allegedly violated shall be identified.

Section 4. 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 hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2009.

ATTEST

MAYOR

City Clerk

First Reading _____

Second Reading _____

ORDINANCE NO. 2010-17

AN ORDINANCE OF ORANGE COUNTY, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS; ADOPTING FINDINGS; PROVIDING DEFINITIONS; IMPOSING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR NEW PAIN MANAGEMENT CLINICS; ESTABLISHING THAT NO PAIN MANAGEMENT CLINIC MAY LIMIT ITS BUSINESS TO CASH ONLY; ESTABLISHING HOURS OF OPERATION FOR PAIN MANAGEMENT CLINICS; DIRECTING STAFF TO STUDY, ANALYZE AND REPORT TO THE BOARD ON ISSUES RELATING TO PAIN MANAGEMENT CLINICS BY A DATE CERTAIN; PROVIDING FOR PENALTIES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Orange County Sheriff's Office and the Metropolitan Bureau of Investigation for the Ninth Judicial Circuit have advised the Orange County Board of County Commissioners ("BCC") that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating in and around Orange County; and

WHEREAS, the illegal distribution of prescription drugs, increased crime associated with such activity, and the high number of deaths in Orange County relating to prescription drug abuse has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of county citizens; and

WHEREAS, the Florida Legislature has identified concerns regarding the increased use and abuse of substances controlled by federal and/or state law and the frequency of injury and death occurring as a result of the increased availability of controlled substances via medical practitioners operating in pain management clinics or facilities; and

WHEREAS, Florida Statutes require physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and

WHEREAS, several counties and municipalities in Florida have established moratoria on certain new pain management clinics to curb the immediate negative impacts created by these clinics, such as illegal prescription drug trafficking and sales of illegal drugs around the clinics, and loitering in areas surrounding the clinics; and

WHEREAS, the negative impacts associated with certain pain management clinics creates an urgent situation necessitating immediate investigation into and potential regulation of such clinics in Orange County; and

WHEREAS, it is not the intent of this Ordinance to interfere with the legal prescription, dispensation, or use of controlled substances; and

WHEREAS, under its home rule authority Orange County can pass additional legislation to further regulate pain management clinics as long as these additional regulations are not preempted in the law and are not inconsistent with the statutory provisions; and

WHEREAS, the BCC intends by this ordinance to implement a moratorium on the issuance of any new Business Tax Receipts for pain management clinics and to direct County staff to analyze the effects of pain management clinics on our community and to prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens of the county by local regulation of pain management clinics and to restrict cash only operations and hours of operation of existing clinics through the period of this moratorium; and

WHEREAS, at least during the term of this moratorium, the BCC desires to adopt restrictions on the form of payment that is made at pain management clinics and limitations on the hours of operation of such clinics.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Title. This Ordinance shall be known as the "Chad Phillips Act."

Section 3. Definitions. For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings:

A. *Chronic nonmalignant pain* means pain unrelated to cancer, which persists beyond the usual course of the disease or injury that is the cause of the pain, for more than ninety (90) days after surgery.

B. *Controlled substance* is defined as in section 893.02, Florida Statutes, and means a controlled substance listed in Schedules I to V in section 893.03, Florida Statutes.

C. *Pain management clinic* means any privately owned pain management clinic, facility or office which advertises in any medium for any type of pain management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medication and is required to register with the Florida Department of Health pursuant to sections 458.3265 or 459.0137, Florida Statutes, as may be amended from time to time. *Pain management clinic* does not include a clinic:

1. Licensed as a facility pursuant to Chapter 395, Florida Statutes, as may be amended;
2. Where the majority of the physicians who provide services in the clinic primarily provide surgical services;
3. 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 exceeded \$50 million dollars;
4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. That does not prescribe or dispense controlled substances for the treatment of pain; or
6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) as may be amended.

D. *Physician primarily engaged in the treatment of pain* means a physician who prescribes or dispenses controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain.

Section 4. Moratorium.

A. Beginning on December 15, 2010, a moratorium shall exist for one year and expire on December 14, 2011, or sooner as provided herein, during which time the Tax Collector shall not issue any new Local Business Tax Receipt to any person for the purpose of engaging in, operating, or managing a pain management clinic. The Tax Collector is authorized to renew or transfer any Local Business Tax Receipt or Occupational License to any person for the purpose of engaging in or managing a pain management clinic existing on the effective date of this ordinance. However, if a pain management clinic is not registered with the Florida Department of Health as required by sections 458.3265 or 459.0137, Florida Statutes, the Local Business Tax Receipt or Occupational License is not eligible for renewal or transfer.

B. The moratorium shall expire upon the earlier of the following:

1. On December 14, 2011, one year from the effective date of this Ordinance;
2. The effective date of an ordinance, adopted by the Board of County Commissioners, to address drug use and distribution associated with pain management clinics which dispense narcotic drugs on site in Orange County; or
3. At such time as the Board of County Commissioners receives a report from County staff on issues relating to pain management clinics and votes by majority vote to repeal this moratorium.

C. If, during the period of this moratorium, an application is made for issuance of a Local Business Tax Receipt for the operation of any of the following categories, which the applicant represents at the time of application, is not being operated and will not be operated during the period of term covered by the Local Business Tax Receipt as a pain management clinic, the applicant, as a condition of issuance of the Local Business Tax Receipt, shall execute and deliver to the Tax Collector an affidavit confirming such representation. If, during the time covered by the Local Business Tax Receipt, the clinic, facility or office is found to be, in fact, operating as a pain management clinic, the Local Business Tax Receipt shall be subject to immediate suspension or revocation in proceedings before the Code Enforcement Special Magistrate, in addition to any other civil or criminal remedies or penalties available under local, county, state, and federal laws. Failure or refusal of applicant to execute and deliver the above-described affidavit shall result in a denial of the issuance of the Local Business Tax Receipt. An executed affidavit shall accompany an application for a Local Business Tax Receipt in all of the following categories:

Local Business Tax Receipt Category Number	Description
2711	Amusement Center
3001	Physician
3005	Dentist
3011	Massage Therapist (state certified)
3012	Chiropractor
3014	Ophthalmologist

3016	Psychologist
3020	Miscellaneous professional
3100	Miscellaneous
3110	Consulting
3200	Retail store
3502	Wholesale
5000	Business

Section 5. No Cash Only. During the moratorium established herein, no pain management clinic in operation as of December 15, 2010 shall limit patient payment options to cash only.

Section 6. Hours of Operation. During the moratorium established herein, the hours of operation of a pain management clinic in operation as of December 15, 2010 shall be limited to 7 a.m. to 9 p.m. of the same day.

Section 7. Staff Report.

A. This moratorium has been established for the minimum time period necessary for County staff to analyze the effects and impacts of pain management clinics in Orange County; analyze the criteria for additional standards needed, if any, under zoning, land use, land development, and general police power regulations in connection with the issuance of any development permits, business licenses, business tax receipts, or approvals for pain management clinics within the County; analyze any new laws regarding pain management clinics enacted by the Florida Legislature; complete an analysis of illegal drug use, distribution patterns, and other public health, safety and welfare issues that are associated with some pain management clinics that dispense

narcotics on site; and, to make recommendations to the Board of County Commissioners regarding whether there is a need to enact an ordinance regulating pain management clinics so as to better promote the health, safety and general welfare of the citizens of the County.

B. County staff is directed to provide a report to the BCC of its findings and recommendations by not later than July 12, 2011.

Section 8. Penalties. Unless as otherwise provided herein, violations of this Ordinance shall be punishable in accordance with Section 1-9 of the Orange County Code of Ordinances. In addition, the County may bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

Section 9. Note to Codifier. This Ordinance may be codified as a new Article XIV, Chapter 2, of the Orange County Code.

Section 10. Effective Date. This Ordinance shall become effective on December 15, 2010.

ADOPTED THIS 7th DAY OF DECEMBER, 2010.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Richard T. Crotty
County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

ORDINANCE NO. 2010-59

AN EMERGENCY ORDINANCE OF THE CITY OF TAMPA, FLORIDA, MAKING COMPREHENSIVE REVISIONS TO CITY OF TAMPA CODE OF ORDINANCES, CHAPTER 6 (BUSINESS REGULATION); CREATING DIVISION 11 PAIN MANAGEMENT CLINICS, SECTION 6-255 THROUGH SECTION 6-262; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Tampa Police Department reports that a pattern of illegal drug use and distribution has been linked to Pain Management Clinics operating in the City of Tampa; and

WHEREAS, the illegal narcotic activity and significant increased crime associated with such clinics has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of citizens within the City of Tampa; and

WHEREAS, the Florida Legislature has identified identical concerns regarding the increased use and frequency of injury and deaths occurring through use of Pain Management Clinics by persons obtaining prescription drugs for improper purposes and enacted the Prescription Drug Monitoring Program scheduled to go into effect December 1, 2010, and the Prescription Drug Monitoring Act, which requires physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and

WHEREAS, many counties and municipalities in Florida have established new regulations on pain management businesses to curb negative impacts created by these clinics, such as illegal prescription drug trafficking and sales of illegal drugs around the clinics, loitering by pain clinic customers while waiting in long lines to receive drugs and loitering in areas surrounding the clinics; and

WHEREAS, the illegal activities associated with certain Pain Management Clinics creates an emergency situation necessitating immediate regulation of such clinics in the City of Tampa; and

WHEREAS, the Tampa City Council has determined that existing and future businesses operating as Pain Management Clinics within the City of Tampa, will provide local oversight of these businesses and hinder illegal activities related to these clinics; and

WHEREAS, it is not the intent of this Ordinance to interfere with legitimate medical clinics or the legal use of controlled substances; and

1 care facilities for the disabled, or clinics which are affiliated with an accredited medical
 2 school at which training is provided for medical students, residents or fellows.

3
 4 Knowingly means with actual knowledge of a specific fact or facts, or with
 5 reasonable inquiry a reasonable person should have known a specific fact or facts.

6
 7 Medical Director. The physician licensed by the State of Florida with a full,
 8 active and unencumbered license under Florida Statutes Chapter 456 or 459 who shall be
 9 the designated physician responsible for complying with all requirements related to the
 10 permitting and operation of the Pain Management Clinic.

11
 12 Permit means a permit to operate a Pain Management Clinic.

13
 14 Permittee means a person in whose name a permit to operate a Pain Management
 15 Clinic has been issued, as well as all individuals listed as an applicant on the application
 16 for a permit for a Pain Management Clinic.

17
 18 Person means an individual, partnership, corporation, association, or legal entity.
 19 Any individual with any partial or whole ownership of any partnership, corporation,
 20 association or legal entity shall also be included in this definition."

21
 22 **Section 3.** That "Sec. 6-256. Permit required; application for permit." is
 23 created as follows:

24
 25 **"Sec. 6-256. Permit required; application for permit.**

26
 27 (a) After the adoption of this Division 11, no person shall operate a Pain Management
 28 Clinic in any location within in the City of Tampa without a permit as provided
 29 for herein.

30
 31 (b) A separate permit is required for each Pain Management Clinic location. A
 32 person who seeks to operate a Pain Management Clinic and the person who is the
 33 property owner for property on which the Pain Management Clinic is located shall
 34 sign the application for a permit as an Applicant(s). At least one applicant shall be
 35 the Medical Director of the Pain Management Clinic. The Applicant(s) shall be
 36 fully responsible for compliance with this Section and each applicant shall be
 37 considered a permittee upon the grant of a permit pursuant to this Division 11.

38
 39 (c) The notarized application for a permit shall:

40
 41 (1) Be typewritten, signed and sworn to by the applicant(s) and shall include
 42 the post office address of the applicant and the property owner. The
 43 application shall not be signed by an authorized agent.

1 (2) Provide an accurate legal description of the property on which the Pain
2 Management Clinic is located including street address, if any, and the
3 names of all owners, mortgage holders, lienors and lessees.
4

5 (3) Indicate whether the Pain Management Clinic dispenses controlled
6 substances on the Pain Management Clinic site.
7

8 (4) Include the following information:
9

10 a. The registration number from the State Department of Health as
11 required by Florida Statutes Section 458.309 or 459.005, if the
12 Pain Management Clinic must be registered in accordance with
13 state law.
14

15 b. The professional license numbers of the Medical Director,
16 including DEA number.
17

18 c. A list of all persons associated with the management or operation
19 of the Pain Management Clinic whether paid or unpaid, part time
20 or full time, contract labor or independent contractor.
21

22 The list must include, but is not limited to all owners, operators,
23 employees or volunteers. For persons listed, the following
24 information must be provided:
25

26 i. Title;
27

28 ii. Current home address, telephone numbers and date of birth;
29

30 iii. All criminal convictions whether misdemeanor or felony;
31

32 iv. Current Florida driver's license; and
33

34 v. A set of fingerprints.
35

36 This information shall be required to updated within ten (10) days
37 of any new person becoming associated with the Pain Management
38 Clinic.
39

40 d. A written determination by the Zoning Administrator that property
41 in which the Pain Management Clinic is located or seeks to locate
42 complies with all current applicable provisions of the Land
43 Development Code, including but not limited all required parking
44 requirements for a Clinic use (as defined in Chapter 27, City of
45 Tampa Code of Ordinances).
46

- e. An affidavit by the Medical Director for the Pain Management Clinic attesting to the following:
 - i. that their practice is located at the Pain Medical Clinic;
 - ii. that no employees of the facility have been convicted of a drug-related felony within the five year period to the date of application;
 - iii. that the Pain Management Clinic will not knowingly employ any such convicted felons thereafter; and
 - iv. that the Medical Director shall be required to inform the City of Tampa within (10) days should the Medical Director be terminated or otherwise leave the affiliation with the Pain Management Clinic as Medical Director.
- f. A floor plan of the Pain Management Clinic showing the location and size of the waiting area, location of and size of the patient rooms and location and type of diagnostic equipment.
- g. If any controlled substances are dispensed on-site during the course of business, a floor plan showing the location and the method of security for protection of any controlled substance to be dispensed in the course of business."

Section 4. That **"Sec. 6-257. Requirements for issuance of permit; posting."** is created as follows:

"Sec. 6-257. Requirements for issuance of permit; posting

- (a) The application shall be reviewed by the police department, the fire department, the department of growth management and development services and any other person or entity deemed appropriate by the Official for compliance with the provisions of this Division 11.
- (b) The Official shall either approve the issuance of a Pain Management Clinic permit within sixty (60) days after receipt of a complete application, deny the application or request additional information.
- (c) The following shall be a basis for denial of an application:
 - (1) An applicant is under eighteen (18) years of age.
 - (2) An applicant has failed to answer or falsely provided information as part of the application.

1 (3) An applicant or a person listed in the application has been convicted of a
2 crime or had final administrative action taken,

3
4 a. Involving:

5
6 1. Any felony or misdemeanor offense of Florida Statutes
7 which involves the prescribing, dispensing, supplying or
8 selling of any controlled substance as defined by Florida
9 Statutes, or

10
11 2. Any violation of Pain Management Clinic regulations of
12 any other city, county, state or government; or

13
14 3. Any administrative or other similar action in which the
15 applicant has been denied the privilege of prescribing,
16 dispensing, administering, supplying or selling any
17 controlled substance by this State or any other State; or

18
19 4. Any administrative or other similar action in which the
20 State or any other State's Medical Board action taken
21 against the applicants medical license as a result of
22 dependency on drugs or alcohol.

23
24 b. For which:

25
26 1. Less than two (2) years have elapsed since the date of
27 conviction or the date of release from confinement imposed
28 for the conviction, whichever is the later date, if the
29 conviction is of a misdemeanor offense;

30
31 2. Less than five (5) years have elapsed since the date of
32 conviction or the date of release from confinement for the
33 conviction, whichever is the later date, if the conviction is
34 of a felony offense; or

35
36 3. Less than five (5) years have elapsed since the date of the
37 last conviction or the date of release from confinement for
38 last conviction, whichever is the later date, if the
39 convictions are of two (2) or more misdemeanor offenses
40 or combination of misdemeanor offenses occurring within
41 any twenty-four-month period.

42
43 4. Less than five (5) years have elapsed for any final
44 administrative or other action.
45

c. The fact that a conviction is being appealed has no effect on the disqualifications of the applicant under subsection (a) above.

Section 5. That "Sec. 6-258. Grant of Permit; Operational Standards." is created as follows:

"Sec. 6-258. Grant of Permit; Operational Standards.

- (a) Each permit shall be effective for one (1) year and be subject to annual renewal.
- (b) A permit shall be issued to the persons deemed the Permittee (s) for the particular location provided for in the application and shall not be transferable in any manner either to another person or for another location.
- (c) The grant of a permit is expressly conditioned upon compliance with the following operational standards:
 - (1) The permit must be posted in a conspicuous place at or near the entrance to the Pain Management Clinic so that it may be easily read at any time.
 - (2) The Pain Management Clinic shall not limit the form of payment for services or prescriptions to cash only.
 - (3) The Pain Management Clinic shall be operated by the Medical Director.
 - (4) The hours of operation of the Pain Management Clinic shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Saturday.
 - (5) The Pain Management Clinic shall maintain the diagnostic equipment to diagnose and treat patients complaining of chronic pain as provided for by the appropriate standard of care.
 - (6) The Medical Director shall secure prescription pads so that only authorized persons may access them. All prescription pads shall contain the name of the Pain Management Clinic and the Pain Management Clinic permit number."

Section 6. That "Sec. 6-259. Fees." is created as follows:

"Sec. 6-259. Fees.

The Tampa City Council shall, by resolution, establish non-refundable fees for the City to review the Pain Management Clinic permit application and for each permit issued under the terms of this chapter."

Section 7. That "Sec. 6-260. Inspection." is created as follows:

"Sec. 6-260. Inspection.

(a) Application for, and issuance of, any Pain Management Clinic permit shall constitute consent by the permittee for representatives of the City of Tampa, at any time it is open for business or occupied, to enter and inspect the premises of the Pain Management Clinic for the purpose of verifying compliance with the permit.

(b) No person who operates a Pain Management Clinic shall refuse to permit a lawful inspection of the premises by a representative of the City of Tampa at any time it is open for business or occupied."

Section 8. That "Sec. 6-261. Expiration of permit." is created as follows:

"Sec. 6-261. Expiration of permit.

(a) A permit for a Pain Management Clinic expires one (1) year from the date of issuance. A permit may be renewed only by making application as provided in this Division 11. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the permit will not be affected by the pendency of the application.

(b) If a permit or renewal for a Pain Management Clinic is denied the applicant may not be issued a Pain Management Clinic permit for one (1) year from the date denial becomes final, unless the basis for denial has been corrected or abated."

Section 9. That "Sec. 6-262. Penalties and remedies." is created as follows:

"Sec. 6-262. Penalties and remedies.

Any person who operates or causes to be operated a Pain Management Clinic without a valid permit or in violation of any provision of this Section shall be subject to the following penalties and/or remedies:

(a) Violations of this Section may be punished as provided in City of Tampa Code Section 1-6.

(b) Each day that any violation continues after receipt of a written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

(c) In addition to the penalties and remedies above, the City may institute any appropriate action or proceedings to prevent, restrain, correct or abate a violation of this Chapter, as provided by law."


Section 10. That should a court of competent jurisdiction declare any part of this Ordinance invalid the remaining parts hereof shall not, in any way, be affected by such determination as to the invalid part.

Section 11. That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any conflict.


Section 12. That this ordinance shall take effect immediately upon becoming a law.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON MAY 20 2010.

ATTEST:



CHAIRMAN/CHAIRMAN PRO TEM
CITY COUNCIL



CITY CLERK/DEPUTY CITY CLERK

APPROVED BY ME ON MAY 24 2010



PAM IORIO, MAYOR

APPROVED AS TO LEGAL SUFFICIENCY BY:

E/S

JULIA MANDELL COLE
SR. ASSISTANT CITY ATTORNEY

K:/Debbie/Chapter 6 – Pain Clinic Ordinance – 5.20.10 ver4 final

**MARTIN COUNTY, FLORIDA
SUPPLEMENTAL MEMORANDUM**

TO: Honorable Members of the Board of County Commissioners **DATE:** February 14, 2011

VIA: Taryn Kryzda
County Administrator

FROM: Nicki van Vonno, AICP
Growth Management Director

REF:
SUBJECT: Pain Management Clinics Land Development Regulations

In response to the direction and input that was provided to staff at the February 8, 2011 public hearing the proposed Pain Management Clinics ordinance has been amended. The amended language is reflected in yellow. The revisions to the proposed ordinance include the following:

1. The definition on Page 3 now includes “wellness center” and “detox center” which advertise in any medium for any type of pain management services, or employ a medical or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications.
2. The medical school exemption on Page 3 now reads, The clinic is **owned by, leased by or contractually** affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.
3. The pain management clinic use has been removed on Page 5 as a permitted use in the CC, Community Commercial zoning district.
4. The phrase “unless such pharmacy shall have pre-dated the pain management clinic by at least one (1) year” has been removed on Page 7 from the co-location and pharmacy distance regulations..
5. The word “detox” has been added on Page 8 as a prohibited word in the signage regulations.

Recommendation

The Board is advised that the proposed Pain Management Clinics ordinance is in order as amended and qualifies for an action of approval. If the Board concurs and approval is granted, authorization is requested for the Chairman to sign the ordinance.

Alternative Recommendation

Based on a finding by the Board that additional information is required from staff before final action can be taken on the proposed ordinance, the Board has the option to continue the agenda item to a future date certain Board meeting.

Reviewed by Stephen Fry, County Attorney

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NUMBER ____

AN ORDINANCE OF MARTIN COUNTY, FLORIDA, AMENDING SECTION 3.3. GLOSSARY OF TERMS, SECTION 3.11. PERMITTED USES, AND DIVISION 3. STANDARDS FOR SPECIFIC USES, ARTICLE 3, ZONING DISTRICTS, LAND DEVELOPMENT REGULATIONS, MARTIN COUNTY CODE; PROVIDING REGULATIONS FOR PAIN MANAGEMENT CLINICS; PROVIDING FOR APPLICABILITY, CONFLICTING PROVISIONS AND SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, in the Fall of 2009, the State Attorney’s Office for the 17th Judicial Circuit in Broward County, Florida, issued an interim report entitled “The Proliferation of Pain Clinics in South Florida” which established the following facts: (i) from August 2008 to November 2009, one new pain clinic was opened in Broward and Palm Beach counties every three days; (ii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the United States during the period from July 2008 to March 2009; (iii) in 2008, prescription drugs were related to nearly 13.5 deaths per day in Florida; and (iv) pain clinics are migrating north from Broward County to other metropolitan areas; and

WHEREAS, the Martin County Board of County Commissioners has recently been made aware by news reports that a pattern of illegal drug use and distribution has been associated with some pain management clinics in south Florida which dispense narcotic drugs on-site; and

WHEREAS, there have been several newspaper articles published in recent months describing the “pipeline” trafficking of drugs from some south Florida pain management clinics to users from other states such as Kentucky, West Virginia and Ohio; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with certain pain management clinics is significant and could undermine the economic health of the County’s development and redevelopment efforts; and

WHEREAS, the Martin County Board of County Commissioners adopted Ordinance Number 862 on April 13, 2010 establishing a moratorium on the issuance and licenses for pain clinics and pain management clinics for a period of one year or upon the effective date of amendments to the Martin County Code dealing with pain clinics and pain management clinics; and

WHEREAS, the County Administrator, the County Attorney and the Growth Management Director have reviewed the latest Florida legislation adopted as Chapter 2010-211,

Laws of Florida (SB2272), effective on October 1, 2010, and recommend additional standards be incorporated into the County's Land Development Regulations, Martin County Code to further promote the public health, safety, morals and general welfare; and

WHEREAS, other local area jurisdictions, including the City of Boca Raton, the City of Delray Beach, the Town of Jupiter, Palm Beach County and the City of Stuart have recently enacted moratoria or regulations pertaining to pain management clinics in their jurisdictions, and as a result, the County could become a target for the location of pain management clinics; and

WHEREAS, it is not the intent of these regulations to interfere with legitimate medical practices, including legitimate pain management clinics, nor the legal dispensation and use of controlled substances.

WHEREAS, the proposed revisions to the Land Development Regulations have received public hearings before the Local Planning Agency and the Board of County Commissioners; and

WHEREAS, the Local Planning Agency has recommended its approval/~~denial~~ of the proposed revisions to the Land Development Regulations to the Board of County Commissioners.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, MARTIN COUNTY, FLORIDA, THAT:

PART 1: AMENDMENT TO ARTICLE 3, ZONING DISTRICTS, SECTION 3.3. GLOSSARY OF TERMS, SECTION 3.11 PERMITTED USES, DIVISION 3. STANDARDS FOR SPECIFIC USES

Article 3 is hereby amended as follows (new language is underlined, deleted language is struck through):

Sec. 3.3. - Glossary of terms.

Business and professional offices. Office uses which extend services by providing advice, information or consultation of a professional nature, such as, but not limited to, insurance, real estate, and executive management, but specifically excluding the storage or display of goods or chattels for the purpose of sale, lease, or rent and specifically excluding financial institutions Business and professional office use shall also include the creation and processing of information, such as, but not limited to, life sciences, technology, research, computer software development, information storage and retrieval and publishing, excluding pain management clinics.

Medical services. The provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists, and other licensed medical practitioners, as well as the provision of medical testing and analysis services. These services are provided to patients who are

admitted for examination and treatment by a physician involving no overnight lodging, excluding pain management clinics.

Outdoor shooting range. (See: Shooting range, outdoor.)

Pain management clinic or clinic. The same as the definition found in Sec. 458.3265(1)(a), Florida Statutes (2010), as may be amended from time to time. **Notwithstanding this definition the use of the words “wellness center” and “detox center” shall not exempt clinics, facilities of offices which advertise in any medium for any type of pain management services, or employ a medical or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications from this definition.** Such definition shall not include any of the following:

1. A clinic that is licensed as a facility pursuant to chapter 395; or
2. A majority of the physicians who provide services in the clinic primarily provide surgical services; or
3. The clinic 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 exceeded \$50 million; or
4. The clinic is **owned by, leased by or contractually** affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows; or
5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or
6. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3); or
7. A facility that is owned or operated by a chiropractic physician licensed under Chapter 460, Florida Statutes, and does not contract or employ a physician licensed under Chapter 458 or Chapter 459, Florida Statutes, who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications for the treatment of chronic nonmalignant pain.
8. A clinic that is associated with a not-for-profit hospice care provider.

Pain specialist (approved). A physician, or group of physicians licensed under either Chap. 458 or Chap. 459, Florida Statutes, and who comply with Rule 64B8-9.0131 (medical doctors), or Rule 64B15-14.005 and Rule 64B15-14.009 (osteopathic physicians), Florida Administrative Code, as each is amended from time to time.

Parking lots and garages. A public or private parking lot or parking structure operated as a principal use for the purpose of providing off-street parking or storage of operable motor

vehicles, including trailers, but specifically excluding the parking or storage of construction equipment.

Pharmacy. The same as the definition in Sec. 465.003, Florida Statutes (2010), as may be amended from time to time, and includes *community pharmacy, internet pharmacy, and special pharmacy*, but does not include *institutional pharmacy* or *nuclear pharmacy*, as each of those terms are used in that section.

Place of worship. Any structure, used on a regular basis by a group of persons who assemble for religious worship, including, but not limited to, a church, synagogue, mosque, or temple.

Retail sales and services, general. Retail sale or rental from the premises of goods and/or services and highway-oriented sales and services that generally cater to a market area in excess of three miles, excluding establishments with significant wholesaling, warehousing, or outside storage and distribution functions and excluding pain management clinics.

Retail sales and services, limited. Shops and stores limited to retail sales of convenience items or services typically needed on a frequently reoccurring basis, excluding pain management clinics. This definition includes shops with:

1. Limited inventory;
2. A household market area in the immediate vicinity;
3. A specialized market with customized service demand; or
4. A tourist-oriented market area in the immediate vicinity.

Sec. 3.11. Permitted uses.

TABLE 3.11.2
PERMITTED USES - CATEGORY "A" NONRESIDENTIAL DISTRICTS

USE CATEGORY	C O	C O R 1	C O R 2	L C	C C	G C	W R C	W G C	L I	G I	H I	P R	P C	P S 1	P S 2
<i>Commercial and Business Uses</i>															
Adult business									P	P	P				
Ancillary retail use	P	P	P												
Bed and breakfast inns	P	P	P	P	P		P	P							
Business and professional offices	P	P	P	P	P	P	P	P	P	P					
Campgrounds												P			

Commercial amusements, indoor				P	P	P	P	P	P						
Commercial amusements, outdoor						P	P	P	P						
Commercial day care				P	P	P	P	P	P	P				P	P
Construction industry trades				P	P	P			P	P	P				
Construction sales and services				P	P	P			P	P	P				
Family day care		P	P												
Financial institutions	P	P	P	P	P	P			P	P					
Flea markets						P			P	P					
Funeral homes				P	P	P								P	P
General retail sales and services				P	P			P							
Golf courses														P	P
Golf driving ranges						P			P					P	P
Hotels, motels, resorts and spas				P	P	P	P	P	P	P					
Kennels, commercial						P			P	P	P				P
Limited retail sales and services				P	P	P	P	P	P						
Marinas, commercial					P	P	P	P				P			
Marine education and research							P	P						P	P
Medical services	P	P	P	P	P	P			P						
<u>Pain management clinics</u>				<u>P</u>	<u>P</u>	<u>P</u>			<u>P</u>						
Parking lots and garages				P	P	P								P	P
Recreational vehicle parks				P	P	P	P	P				P			
Recreational vehicle parks, limited to the number and configuration of units lawfully established prior to the effective date of this ordinance		P	P												
Residential storage facilities	P	P	P	P	P	P			P	P					
Restaurants, convenience, with drive-through facilities						P			P						
Restaurants, convenience, without drive-through facilities				P	P	P	P	P							
Restaurants, general				P	P	P	P	P	P	P					
Shooting ranges															
Shooting ranges, indoor				P	P	P			P	P	P			P	P
Shooting ranges, outdoor															P
Trades and skilled services						P	P	P	P	P	P				
Vehicular sales and service						P			P	P					
Vehicular service and maintenance						P			P	P	P				

Veterinary medical services				P	P	P			P	P	P				
Wholesale trades and services						P		P	P	P	P				

DIVISION 3, STANDARDS FOR SPECIFIC USES

Sec. 3.86.1. Pain management clinics

Sec. 3.86.1.A. General requirements

1. Pain management clinics shall at all times, be in compliance with each and every provision of this section, as well as all applicable federal laws, state laws, administrative rules, and County regulations; and
2. Pain management clinics, as defined in Sec. 3.3. Article 3, Zoning Districts, Land Development Regulations (LDR), Martin County Code (MCC), shall be permitted only in the zoning districts so specified in Sec 3.11., LDR, MCC and must be operated by an approved pain specialist, or as a Florida Agency for Health Care Administration (ACHA) licensed operation, under Chapter 400, Part X, Florida Statutes, and as otherwise required by Florida law; and
3. In the event the owner or operator of a state licensed or designated pain management clinic has such license or designation revoked by the Florida Board of Medicine, the Florida Board of Osteopathic Medicine or by ACHA, any permission granted by the County to operate the pain management clinic shall simultaneously be revoked, and shall thereafter be null and void.
4. Copies of all required state licenses and permits must be provided to the County prior to the issuance of any occupation authorizations, licenses or permits or any renewal of occupation authorizations, licenses or permits by the County.

Sec. 3.86.1.B. Location.

1. On or after January 1, 2011 any new pain management clinic shall only be located in the zoning districts where such uses are permitted pursuant to Sec.3.11. Permitted uses, Article 3, LDR, MCC and shall be established pursuant to the requirements of this section, subject to the other requirements of this section.
2. Pain management clinics, regardless of location, which exist on December 31, 2010 shall be deemed a lawful use, and not subject to the requirements of this section.

Sec. 3.86.1.C. Distance requirements.

1. Distances shall be measured by straight line measurement without regard to intervening buildings from the nearest point of the building or unit within a building in which the

proposed clinic is to be located to the nearest point of the lot, use, right-of-way line or district from which the proposed clinic is to be separated.

2. No pain management clinic shall commence operation within 1,000 feet of any other pain management clinic.

3. No pain management clinic shall be co-located in the same office or building with a pharmacy, unless such pharmacy shall have pre-dated the pain management clinic by at least one (1) year.

4. No pain management clinic shall commence operation within 500 feet of a pharmacy, unless such pharmacy shall have pre-dated the pain management clinic by at least one (1) year.

5. Regardless of the other provisions of subsection C, above, no pain management clinic shall commence operation within 5,000 feet from the nearest Interstate 1-95 or Florida Turnpike exit ramp or access ramp right-of-way line.

Sec. 3.86.1.C. Other regulations.

1. It shall be unlawful for any pain management clinic to be open for operation between the hours of 6:00 p.m. and 7:00 a.m.

2. It shall be unlawful for a pain management clinic owner or operator to direct or encourage any patient or business invitee to stand, sit, or gather outside of the building in which the clinic operates, on the adjoining sidewalk or in the area(s) designated for parking, in such manner as to restrict or interfere with the lawful entry into or out of such clinic or other uses co-located within a building. This prohibition includes sitting in or on a vehicle. The clinic owner(s) and operator(s) shall be responsible to actively monitor and apply this regulation. Clinics shall provide sufficient inside seating to insure and provide adequate seating for all patients or business invitees, and those who accompany such persons.

3. The number of parking spaces required for pain management clinics shall be the same as for those required of medical offices.

Sec. 3.86.1.D. Signage.

1. Approved signage for a pain management clinic shall not include any word(s) or phrase(s) which offers or suggests goods, drugs, prescriptions or services in violation of any applicable state law or which otherwise violates state law, including without limitation, the provisions of Sections 456.037 (active license required), 456.057 (patient records requirements), 458.3265 (pain management clinic registration – MD), 458.327 (medical practice violations & penalties), 458.331 (medical disciplinary actions), 459.0137 (pain management clinic registration – DO), 459.013 (osteopathic practice violations & penalties), 459.015 (osteopath disciplinary actions), 465.0276 (dispensing practitioners) or 893.055

(drug monitoring program), Florida Statutes, as currently written or amended.

2. Signage for a pain management clinic shall not contain any word or phrase that uses the word “pain” or “detox”, unless the clinic is operated by an approved pain specialist or as an AHCA licensed operation (Chapter 400, Part X, F.S.). No off-premise signage, including billboards wherever located, shall be permitted for the advertisement of pain management clinics.

3. Signage for a pain management clinic must contain the correct name of the physician or physicians designated by the clinic pursuant to Sec. 458.3265(1), Florida Statutes, as amended from time to time, and such signage shall be kept current at all times with the correct name of the practice, the correct name of the physician(s) designated, and other relevant information.

4. Nothing contained in this section shall be interpreted to restrict the use of the word “pain” in advertising by Florida licensed chiropractors, physical therapists, nurse practitioners, naturapaths, acupuncturists, massage therapists, dentists, oral surgeons, hospice care providers or similar treating or dispensing professionals not licensed under Chapters 458 or 459, Florida Statutes.

Sec. 3.86.1.D. Landlord Responsibilities.

Owners or landlords who lease space to a pain management clinic must expressly incorporate the provisions of this Sec. 3.86.1. into their lease(s) with the clinic. Any such lease, whether oral or written, must provide that a violation of any federal or state law or County ordinance regulating or affecting pain management clinics shall be a material breach of the lease and shall constitute grounds for termination and eviction by the owner or landlord.

PART 2: APPLICABILITY OF ORDINANCE.

This ordinance shall be applicable throughout the unincorporated area of Martin County.

PART 3: CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning the adoption or amendment of the Comprehensive Plan, pursuant to Chapter 163, Part II, Florida Statutes, or land development regulations relating specifically to community redevelopment areas established pursuant to Chapter 163, Part III, Florida Statutes.

PART 4: SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the

remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstances.

PART 5: FILING WITH THE DEPARTMENT OF STATE.

The clerk shall be and is hereby directed to forthwith to send a certified copy of this ordinance to the Bureau of Administrative Code, Department of State, R.A. Gray Bldg., Room 101, 500 S. Bronough Street, Tallahassee, Florida 32399-0250.

PART 6: CODIFICATION.

Provisions of this ordinance shall be incorporated into the Martin County Land Development Regulations, except that parts 3 through 8 shall not be codified. The word "ordinance" may be changed to "article," "section," or other word, and the sections of this ordinance may be renumbered or re-lettered.

PART 7: EFFECTIVE DATE

This ordinance shall take effect upon filing with the Office of Secretary of State.

PASSED AND DULY ADOPTED THIS _____ DAY OF _____, 2011.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

MARSHA EWING
CLERK OF THE CIRCUIT COURT

EDWARD CIAMPI, CHAIRMAN

APPROVED AS TO FORM AND
CORRECTNESS:

STEPHEN FRY
COUNTY ATTORNEY