



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

MONDAY, MARCH 21, 2011 AGENDA

2300 NORTH JOG ROAD

CONFERENCE ROOM VC-1E-58, 1ST FLOOR 2:30 PM – 4:00 PM

**A. CALL TO ORDER**

1. Roll Call/Introductions
2. Additions, Substitutions and Deletions to Agenda
3. Motion to Adopt Agenda
4. Adoption of March 2, 2011 Minutes (Exhibit A)

**B. GOALS OF ZONING IN PROGRESS (ZIP)**

1. Focus – Dispensing
2. Timeframe – pending adoption of Ordinance
3. Applicability – new businesses only?

**C. REVIEW OF DRAFT ZIP (EXHIBIT B)**

1. General comments.
2. Specific Questions for Subcommittee:
  - Who maintains records on licensed pharmacists or pharmacies?
  - Regulation of wholesaling?
  - Any special considerations for hospitals or medical centers?
  - Clarify need to regulate physicians (recognizing both existing F.S. and current changes proposed in 2011 legislative session)?
  - Clarify if there is a need to regulate Schedule III and IV?
  - Clarify need to require licensed pharmacist (see also F.S.)?
3. Other considerations?

**D. REFINING SCOPE OF ZIP FOR INCLUSION IN FINAL ORDINANCE**

1. Applicability – apply retroactively to existing dispensers?
2. Other suggestions?

**E. NEXT MEETING DATE AND TOPICS**

1. Monday, April 4, 2011.
2. Review of Ordinance.

**F. PUBLIC COMMENT**

**G. ADJOURN**

# EXHIBIT A

## PAIN MANAGEMENT CLINICS A SUBCOMMITTEE OF THE LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)

### MINUTES OF THE MARCH 2, 2011 SUBCOMMITTEE MEETING

Prepared by Zona Case, Zoning Technician

On Wednesday **March 2, 2011**, the Pain Management Clinics Subcommittee met at the Vista Center, Room VC-1E-58 Conference Room, at 2300 North Jog Road, West Palm Beach, Florida.

First meeting of the Pain Management Clinics Subcommittee for Amendment Round 2011-01.

#### A. CALL TO ORDER

Mr. Cross, called the meeting to order at 2:10 p.m. and asked the participants to introduce themselves.

##### 1. Introduction

**Subcommittee Members:** Jim Knight, Lori Vinikoor and David MacKarey.

**Interested Parties:** Sgt. Brady Myers, Tenna Wiles, Paul Dorling, Jason Appell, Frank Palen, Thomas Lanahan, Charles Wu and Anna Yeskey.

**County Staff:** Bob Banks, William Cross, Zona Case, Deb Wiggins, Kenny Wilson; Verdenia Baker, Barbara Alterman, Jon MacGillis and Maryann Kwok were present at times.

##### 2. Select Chair and Vice Chair

The Committee declined to select a Chair or Vice Chair, preferring a more informal meeting.

##### 3 Additions, Substitutions and Deletions to Agenda

None.

##### 4. Motion to Adopt Agenda

Ms. Vinikoor made the motion to adopt the agenda, seconded by Mr. Wilson.

#### B. Purpose and Intent

##### 1. Goal of Subcommittee – March 1, 2011 BCC Direction

Mr. Cross explained that the County had adopted a moratorium on Pain Management Clinics in April of 2010, which has been extended to September of 2011. The purpose of the moratorium was to limit the adverse impacts from Pill Mills until such time as the State adopted a prescription drug database or other regulatory provisions, or barring any State action, allow staff to develop a comprehensive Ordinance to be adopted prior to the expiration of the Moratorium. In addition, the BCC had recently directed staff to explore the possibility of a moratorium blocking pharmacies due to changes in how Pill Mill operators are responding to new F.S., limiting the dispensing by physicians to a period of no more than 72 hours for cash sales.. The BCC is concerned that a crackdown could lead to rogue pharmacies, instead of doctors, writing prescriptions. Doctors who dispense are already subject to the present code as their use is classified as either a Pain Management Clinic, or Dental or Medical Office.

##### 2. Timeframe/Schedule

Mr. Cross outlined the goal of having amendments ready for presentation to the LDRAB at the April 27 or May 25 meeting, with BCC Public Hearings in June, July and August.. At the start of the meeting the consensus was that one more subcommittee meeting

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would be sufficient for review, but after further discussion of the issue all parties concluded that two more meetings will be necessary.

### C. Background and Summary

#### 1. Status of State Legislation and Database

The moratorium on pain clinics, and the proposed moratorium on pharmacies were discussed. Mr. Cross stated that moratoriums cannot remain in effect for an indefinite period of time, and that pending State or Federal solutions, the likely direction will be to establish regulations that address both Pain Management Clinics and Pharmacies.

#### 2. Law Enforcement

Sgt. Myers outlined current operations of Pain Management Clinics and said that they vary in size, and more recently have been getting larger and acquiring their own pharmacies. Ms. Wiles and Ms. Vinikoor expressed concerns about regulations as they relate to:

- Urgent Care Centers that dispense;
- people picking up prescriptions for malignant cancer patients;
- people with intractable pain (not cancer related), just needing pain management. (There should be Florida statutes for intractable pain); and,
- if doctors guilty of this practice are known, why can't law enforcement go after them.

Sgt. Myers said that there is no control mechanism and anyone can pick up a prescription for another person. There is enough evidence on record to see what is being treated. He continued by saying that it takes months for Tallahassee to take any action.

Messrs. Mackarey and Appel both described the types of drugs and their classification (Schedule I through V), and indicated that a typical pharmacist filled an average of 200 prescriptions per day for these types of drugs.

Ms. Alterman joined the discussion by stating that the focus is to look into having a moratorium on pharmacies and suggested that consideration could be given to placing one on new pharmacies affiliated with Pain Clinics. Mr. Mackarey stated the Pain Clinics will find ways to beat regulations, such as putting up their own pharmacies. The moratorium, he stated, is not intended for large pharmacies such as Walgreens or CVS. He suggested criteria that might help to limit, such as (1) the size; (2) the volume; (3) having a licensed pharmacist at all times; (4) doctors may prescribe but not dispense: a doctor is allowed to dispense in his office but he must validate the prescription. Several participants touted the recent Delray, Boynton Beach and Greenacres Zoning Ordinances that focus on reigning in pill mill pharmacies by limiting the sale of Schedule II controlled substances to no more than 15 percent of all prescriptions filled by a Pharmacy in a 30 day period. Mr. Mackarey indicated that a typical Pharmacy might not exceed 10 percent in this category and that the 15 percent limit was considered generous.

Mr. Cross raised the question of what, apart from the Zoning Ordinance, are the other means available to enforce the 15 percent cap. Mr. Dorling replied that the police can enforce. This was confirmed by Mr. MacKarey who explained that there are methods in place to determine violation as State law requires that Pharmacists maintain detailed

## EXHIBIT A

records. The PBC-DOH inspects annually, but can also inspect at any time. If a violation is noted, the evidence or report is forwarded to local law enforcement or PBSO; if not being used for other case-related issues (this is a crucial note – as the County Code Enforcement may not be called upon to enforce some violations). PBSO would forward the evidence or report to PBC Code Enforcement. After the violation is filed the Special Master process is a lengthy one.

Ms. Wiggins interjected that once a violation is noted, it would be prudent for DOH to conduct regular follow-ups to review records, as when the Code Enforcement case finally gets to Special Master, the offender might argue that they are currently in compliance, be released, and the whole process has to be repeated.

Ms. Wiggins also stated that the Ordinance does not assist in enforcement as Code Enforcement Officers have no authority to get evidence on paper. They have to go to the police. The DOH has to give an Affidavit of Infringement and the offenders are given time to appeal.

### 3. IPARC Subcommittee Report

Mr. Cross referred to the IPARC Subcommittee Report on Page 16 of the Pain Management Clinics handout and there was a ~~quick~~ review of the 5 recommendations. ~~Most were deemed unfeasible or not enforceable and~~ Items 1 -4 of the IPARC Report were the recommendations of the IPARC subcommittee, and the County and some municipalities has or is acting along the lines of what is recommended in Items 1-3. The suggestions listed in Item 5 represent a summary of what other jurisdictions were doing at the time the report was written, and these were reviewed and dismissed as generally being unfeasible. It was ~~generally agreed~~ noted that it is highly likely that PBC will follow the key components of the Delray Ordinance which has been in effect since September 2009, and influenced the Ordinances of other jurisdictions as well.

### 4. What Other Jurisdictions Have Done

Mr. Lanahan gave a brief outline of the proposed amendments being adopted by the City of Greenacres. New definitions have been written for medical and dental office, and regulations prohibiting on-site dispensing, with special exceptions listed. There are new definitions for pharmacies and the same 15 percent limitations on Schedule II controlled substances as discussed above.. Mr. Lanahan went on to say that including the pharmacy requirement adds another layer of prevention. This is a statewide issue which is spreading and the City has decided to press ahead. The State database would be a big asset and these measures are just short term fixes.

Mr. Dorling added that Delray wrote definitions for medical office, pharmacies and drug stores and he was of the opinion that this was the cleaner and less complicated way to do it, namely to eliminate definition of Pain Management Clinic and put restrictions on the medical offices and pharmacies. No on-site dispensing of controlled substances as identified in Florida Statutes.

Mr. MacGillis expressed the view that a definition for pharmacies should be added to the ULDC.

## EXHIBIT A

### D. DISCUSSION

Additional discussion ensued on some elements of the Ordinance being suggested for Martin County, including:

- separation between Pain Management Clinics (1,000') or Pharmacies (500');
- both uses cannot be permitted in same building;
- minimum distances from I-95 and Florida's Turnpike;
- prohibitions on any off-site signage (e.g. billboards);
- requires operators to patrol sidewalks and ensure customers wait inside (not out in parking lot, etc.);
- requirement that Ord. requirements be included in any leases, and if in violation, owner can terminate lease; and,
- provision that automatically revokes any County approvals if facility loses its State licenses.

There was also a brief discussion on the requirement that PMC's have onsite specialists.

### E. Topics for next meeting

Staff indicated that a draft Ordinance would be developed and a tentative late March date established for the next subcommittee meeting.

### F. Public Comment

No additional public comments were heard.

### G. Adjourn

Meeting adjourned 3:50 p.m.

EXHIBIT B

ZONING IN PROGRESS
PHARMACIES AND DISPENSING OF CONTROLLED SUBSTANCES
(Updated 3/14/11)

Part 1. ULDC Art. 1.1.2, Definitions (page 80 of 114), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] 1) Add the term pharmacy and define it as the primary use that provides for the retail sale/dispensing of prescription and non-prescription drugs; 2) Clarify that pharmacies fall under the use of General Retail Sales.

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 Definitions

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

....

44. Pharmacy – shall mean an establishment offering goods for retail sale or on-site dispensing of prescription drugs, non-prescription drugs or both.

[Renumber accordingly.]

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

....

41. Retail Sales, General - for the purposes of Art. 4, an establishment providing general retail sales or rental of goods, but excluding those uses specifically classified as another use type. Uses include typical retail stores such as clothing stores, bookstores, business machine sales, food and grocery stores (excluding convenience stores), window tinting, and marine supply sales (excluding boat sales), and pharmacies. Uses shall also include the sale of bulky goods such as household goods, lawn mowers, mopeds, motorcycles and golf carts. Retail establishments may include limited repair services for their products. For impact fee purposes, general retail also includes services such as entertainment, eating and drinking establishments, and personal services.

....

Part 2. ULDC Art. 4.B.1.A.74, Hospital or Medical Center (page 58-59 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Establish standards and limitations for the dispensing of Schedule II, III and IV controlled substances by physicians.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

71. Hospital or Medical Center

A facility licensed by the State of Florida which maintains and operates organized facilities for medical or surgical diagnosis, overnight and outpatient care, and treatment of human illness. A hospital is distinguished from a medical center by the provision of overnight care. [Ord. 2005-002]

....

f. Accessory Pharmacy

An accessory pharmacy shall be a permitted use to a Hospital or Medical Center, subject to compliance with the limitations of Art. 4.B.1.A.114.g, Sale or Dispensing of Controlled Substances.

Part 3. ULDC Art. 4.B.1.A.83, Medical or Dental Office (page 65 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Clarify F.S. provisions for standards and limitations for the dispensing of Schedule II, III and IV controlled substances by physicians.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

83. 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, chiropractists, naturopaths,

Notes:

Underlined indicates new text. If being relocated destination is noted in bolded brackets [Relocated to: ]

Stricken indicates text to be deleted.

Italicized indicates text to be relocated. Source is noted in bolded brackets [Relocated from: ].

.... A series of four bolded ellipses indicates language omitted to save space.

EXHIBIT B

ZONING IN PROGRESS
PHARMACIES AND DISPENSING OF CONTROLLED SUBSTANCES
(Updated 3/14/11)

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] [Ord. 2010-009]

....
c. Sale or Dispensing of Controlled Substances
On-site dispensing of controlled substances that are identified in Schedule II, III or IV in F.S. § 893.03, and as further amended by F.S. § 893.035, 893.0355, or 893.0356, is prohibited, unless otherwise expressly permitted by statutory or general law.

Part 4. ULDC Art. 4.B.1.A.98, Medical or Dental Office (page 72 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Add reference to clarify that the sale or dispensing of controlled substances is not considered an accessory use to any Personal Services use.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses
98. Personal Services

An establishment engaged in the provision of frequently or recurrently services of a personal nature; or, the provision of informational, instructional, personal improvement or similar professional services which may involve limited accessory retail sale of products. Typical uses include art and music schools, beauty and barbershops, driving schools, licensed therapeutic massage studios, photography studios, and tanning salons.

....
b. Sale or Dispensing of Controlled Substances
The limited accessory retail sale of products does not include the sale or dispensing of controlled substances, unless in compliance with the requirements for Medical or Dental Office, or General Retail Sales.

Part 5. ULDC Art. 4.B.1.A.114, General Retail Sales (page 85 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Establish standards that limit the dispensing of Schedule II drugs to no more than 15 percent of overall prescriptions filled within a 30 day period.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses
114. Retail Sales, General

An establishment providing general retail sales or rental of goods, but excluding those uses specifically classified as another use type. Uses include typical retail stores such as clothing stores, bookstores, business machine sales, food and grocery stores (excluding convenience stores), window tinting, and marine supply sales (excluding boat sales), and pharmacies. Uses shall also include the sale of bulky goods such as household goods, lawn mowers, mopeds, motorcycles and golf carts. Retail establishments may include limited repair services for their products. For impact fee purposes, general retail also includes services such as entertainment, eating and drinking establishments, and personal services.

....
g. Sale or Dispensing of Controlled Substances
A pharmacy shall be subject to the following:
1) No more than 15 percent of the total number of prescriptions filled within a thirty (30) day period can be derived from the sale of controlled substances that are identified in Schedule II in accordance with F.S. § 893.03, and as further amended by F.S. § 893.035, 893.0355, or 893.0356, as determined by audits or information provided through the Florida Department of Health or any other government agency having the legal right to view such records.

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