

MEMORANDUM

PSHA
Agenda Item No. 1(F)1

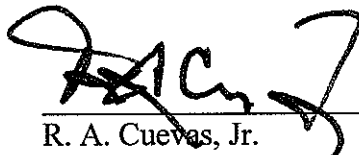
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 12, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance requiring the registration of pain clinics operating in incorporated and unincorporated Miami-Dade County; setting minimum requirements for registration and providing for appeal of denial of registration; providing for temporary moratorium; providing for penalties

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan and Co-Sponsors Commissioner Bruno A. Barreiro, and Commissioner Esteban L. Bovo, Jr.



R. A. Cuevas, Jr.
County Attorney

RAC/jls



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: June 21, 2011

FROM: R. A. Cuevas, Jr.
County Attorney

A handwritten signature in black ink, appearing to read "R. A. Cuevas, Jr.", is written over the printed name of the County Attorney.

SUBJECT: Agenda Item No. 4 (C)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☒ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(C)
6-21-2011

ORDINANCE NO. _____

ORDINANCE REQUIRING THE REGISTRATION OF PAIN CLINICS OPERATING IN INCORPORATED AND UNINCORPORATED MIAMI-DADE COUNTY; SETTING MINIMUM REQUIREMENTS FOR REGISTRATION AND PROVIDING FOR APPEAL OF DENIAL OF REGISTRATION; PROVIDING FOR TEMPORARY MORATORIUM; PROVIDING FOR PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County has experienced a rapid influx of pain clinics and pain management clinics in recent years and currently there are 109 pain clinics in Miami-Dade County; and

WHEREAS, a pattern of illegal drug use and distribution and increased crime has been associated with some pain clinics; and

WHEREAS, some pain clinics dispense or prescribe medically unjustified amounts of controlled substances to addicts and to people who intend to illegally sell the drugs; and

WHEREAS, physicians in Florida, many of whom work in pain clinics, purchased over eighty-five (85%) percent of all the oxycodone and over ninety-three (93%) percent of all the methadone purchased by practitioners in the United States in 2006; and

WHEREAS, there has been an increased number of prescription drug-related deaths in Miami-Dade County over the past several years -- 66 deaths in Miami-Dade County were with the presence of Oxycodone and 122 deaths were with the presence of Benzodiazepines, according to the South Florida Behavioral Network presentation at the Florida Alcohol and Drug Abuse Association on August 11, 2010; and

WHEREAS, according to the various annual and interim reports of the Florida Medical Examiner Commission, in Miami-Dade County, there was a 27% increase in opioid deaths in 2008; 42% of the total opioid reports in 2009 were lethal doses; and 28% of the opioid reports were considered to be the cause of deaths in the first half of 2010; and

WHEREAS, it has been reported to the Miami-Dade County Addiction Services Board that the nearly 1,000 infants born in Florida hospitals were treated for drug withdrawal in 2009, primarily for withdrawal from oxycodone and other prescription drugs; and

WHEREAS, some pain clinics attract unwelcome behaviors on their premises such as loitering, vagrancy, littering, drug use on the exterior of the premises, and illegal sale of drugs; and

WHEREAS, the Florida Legislature unanimously approved, and the Governor will most likely to sign, CS/CS/HB 7095 Engrossed 3, which provides a comprehensive response to pain clinics in Florida, including a prohibition on dispensing controlled substances on site; and

WHEREAS, pursuant to the Home Rule Charter of Miami-Dade County, the Board of County Commissioners has the power to establish, coordinate and enforce such regulations as are necessary for the protection of the public (Section 1.01(A) (12)) as well as perform any other acts which are in the common interest of the people of Miami-Dade County (Section 1.01(A)(23)); and

WHEREAS, the Board of County Commissioners is concerned about the rapid proliferation of pain clinics in Miami-Dade County, the pattern of illegal drug use and distribution and increased crime associated with some pain clinics, the increased deaths and addictions associated with the prolific distribution of prescription drugs for non-medical purposes and the overall nuisance characteristics of many pain clinics; and

WHEREAS, the Board of County Commissioners desires to provide for the public health, safety and welfare of the people of Miami-Dade County,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. That the above recitals of legislative intent and findings are fully incorporated herein as part of this ordinance.

Section 2. Section _____ of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. _____. Definition.

“Pain Clinic” and “Pain Management Clinic” (hereinafter “pain clinics” shall be inclusive of pain clinics and pain management clinics) shall have the same meanings and same exemptions as provided for in Sections 458.3265(1) and 459.0137(1) of Florida Statutes, as amended, or any successor state law..

Sec. _____. Registration.

A. All pain clinics operating within the geographic boundaries of Miami-Dade County shall register with Miami-Dade County’s Consumer Services Department immediately upon issuance of implementing policies and procedures which shall occur no later than sixty (60) days from the effective date of this ordinance, and annually thereafter.

B. Proof of registration with the County shall be prominently displayed in the common public area of the pain clinic.

C. Each pain clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another pain clinic.

D. A database of registered pain clinics operating in Miami-Dade County shall be maintained by the Miami-Dade Consumer Services Department.

5

Sec. _____. Designated Department.

A. The Miami-Dade Consumer Services Department ("Department") shall: conduct the registration process; establish a database of pain clinics operating in Miami-Dade County; enforce the provisions of this ordinance; and charge a fee for processing the applications and maintaining the database.

B. The Department through implementing orders and/or administrative orders shall establish policies and procedures necessary to implement the registration process, maintain the database, enforce the ordinance, and charge fees, and such order(s).

C. The Department is authorized to inspect any pain clinic for proof of registration at any reasonable hour without prior notice.

Sec. _____. Application; Review.

A. Any pain clinic operating in Miami-Dade County shall file a sworn and notarized application which shall include proof of the following:

1. That the applicant has registered with the State Department of Health as required by state law;

2. That the pain clinic is fully owned by a duly licensed medical or osteopathic physician or group of medical or osteopathic physicians, or is licensed as a health care clinic under Part X of Chapter 400 of Florida Statutes; and

3. That all physicians who own the clinic or are employed by or have a contractual relationship with the clinic: have never had a Drug Enforcement Administration number revoked; have never had a license to prescribe, dispense, or administer a controlled substance denied by any jurisdiction; and have never been convicted of or pled guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of Section 893.03 of Florida Statutes, or of any state or the United States; and

4. Ownership in other pharmacies or pain clinics and the percentage of such ownership by any and all physicians who own the clinic seeking registration.

5. In addition, the application shall designate a physician who is responsible for complying with all requirements related to registration and operation of the clinic. If that physician ceases to be affiliated with the pain clinic, another physician must be so designated within ten (10) days. The designated physician must have a clear and active license under Chapter 458 (medical) of Florida Statutes or under Chapter 459 (osteopathic) of Florida Statutes, an active DEA registration; and shall practice at the clinic location for which the physician has assumed responsibility.

6. Any and all physicians associated with the pain clinic as owners, employees, contractors and specifically the physician designated to comply with all the requirements of registration and operations of the clinic shall provide the following:

a. sworn and notarized statement that attests: the physician owns, is employed by or has a contractual relationship with the pain clinic; and when applicable, agrees and accepts the designation to comply with all the requirements of registration and operations of the clinic;

b. a copy of the physician's driver's license or other government issued photographic identification; and

c. a copy of the physician's active State of Florida medical license.

B. The Department may require any physician identified in Sec. ____ (A)(6) to complete an in-person interview to verify the information in the application and/or notarized statement.

C. Within thirty (30) days of submission, the Department shall verify the information in the application and determine whether or not the applicant meets all the criteria established in Section 4(A) above.

1. If the applicant satisfies all the criteria in Section (4)(A), the pain clinic shall be registered within thirty (30) days of submission.

2. If the application is deemed incomplete, the applicant shall be notified in writing of the deficiencies within thirty (30) days of submission. The applicant shall have fifteen (15) days from the date of such notice to correct the deficiencies and complete the application. Failure to respond or make the corrections within the fifteen (15) days shall be considered a withdrawal of the application. The Department shall notify the applicant of the withdrawal upon expiration of the fifteen (15)

days. If the applicant corrects the deficiencies within the fifteen (15) days, the Department shall have fifteen (15) additional days to verify that the application is complete and if complete, register the pain clinic.

3. If the applicant does not satisfy the criteria in Section 4(A), the clinic shall not be registered. The applicant shall be notified in writing of the decision to not register the pain clinic and of the reasons for not registering the clinic within thirty (30) days of submission or fifteen (15) days from the date that the applicant corrects deficiencies. The applicant shall have fifteen (15) days from the date of such notice to request a hearing in writing before the Department Director or designee. The Department Director or designee shall conduct the hearing within twenty (20) days of the date of the request for hearing. The Department Director or designee shall issue a written decision within fifteen (15) days of the hearing.

Sec. _____. Violation.

A. It shall be unlawful for any person to operate a clinic without prior registration. Violations shall be enforced through and in accordance with Chapter 8CC of the Miami-Dade County Code.

B. The Director of the Consumer Services Department is authorized to file any action in a court of competent jurisdiction to enforce the provisions of this ordinance and to seek appropriate remedies. In any such action the department shall be entitled to recover its reasonable costs in the enforcement of this ordinance including reasonable attorney fees.

Section 3. Section ____ of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Sec. _____. Temporary Moratorium.

A. The above recitals of legislative intent and findings are fully incorporated herein as part of this moratorium ordinance. The Board of County Commissioners finds that it is in the best interest of and for the benefit of the health, safety, and welfare of the residents of Miami-Dade County to institute a temporary moratorium on the issuance of pain clinic registrations, occupational licenses/taxes, certificates of use, permits and development orders so that Miami-Dade County can investigate the complaints surrounding pain clinics including but not limited to illegal drug use and distribution, increased crime, drug-related deaths and addictions and other nuisance activities as well as study the effectiveness of recent legislative action, CS/CS/HB 7095 Engrossed 3, in addressing

these complaints. For the duration of this temporary moratorium, the County shall cease accepting applications or requests for issuance of pain clinic registrations, occupational licenses/taxes, certificates of use, permits and development orders from pain clinics not registered with the State of Florida Department of Health as of the effective date of this ordinance.

B. During the temporary moratorium, the Pain Clinic Task Force shall convene, with all deliberate speed, to investigate the complaints about pain clinics. The Pain Clinic Task Force shall consist of one representative from each of the following: the Miami-Dade County Addiction Services Board, the Nuisance Abatement Board, Consumer Services Department, Miami-Dade County Police Department, and Building and Zoning Department. The Task Force shall seek collaboration and input from other local, state and federal law enforcement, the State of Florida Department of Health and any other entity or person the Task Forces deems appropriate.

C. The Mayor or designee shall provide appropriate staff support to the Task Force. The staff shall: comply with requests for information by the Task Force; assist the Task Force with its duties; maintain and keep the records of the Task Force; prepare, in cooperation with the Task Force, the agenda for each meeting; be responsible for the preparation of such reports, minutes, documents, resolutions or correspondence as the Task Force may direct; and generally administer the business and affairs of the Task Force.

D. The Pain Clinic Task Force shall make recommendations to the Board of County Commissioners within one hundred and twenty (120) days from the effective date of this ordinance on: the effectiveness of CS/CS/HB 7095 Engrossed 3 in addressing the complaints surrounding pain clinics; whether or not it is necessary for the County to take any action to address the complaints surrounding plain clinics; and if so, how to best address the complaints surrounding pain clinics, including but not limited to zoning, regulatory, and enforcement recommendations.

E. The temporary moratorium shall expire upon enactment of any new ordinance(s) or resolution(s) addressing the underlying complaints or on hundred and eighty (180) days from the effective date of this ordinance, whichever date is earliest.

Section 4. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

<u>Code Section</u>	<u>Description of Violation</u>	<u>Civil Penalty</u>
>> ____	<u>Operating Pain Clinic</u> <u>without Prior Registration</u>	<u>\$500<<</u>

Section 5. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 7. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:
Karon M. Coleman and Eugene Shy

[Handwritten signature: RAC]
[Handwritten signature: RAC for ES]

Prime Sponsor: Commissioner Barbara J. Jordan
Co-Sponsors: Commissioner Bruno A. Barreiro
Commissioner Esteban L. Bovo, Jr.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.