

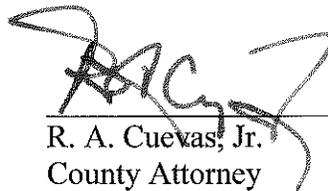
MEMORANDUM

Agenda Item No. 4(F)

TO: Honorable Vice Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners **DATE:** December 18, 2012

FROM: R. A. Cuevas, Jr.
County Attorney **SUBJECT:** Ordinance pertaining to pain clinics; amending Chapter 8cc of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM

(Revised)

TO: Honorable Vice Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: December 18, 2012

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

SUBJECT: Agenda Item No. 4(F)

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 Mayor'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(F)
12-18-12

ORDINANCE NO. _____

ORDINANCE PERTAINING TO PAIN CLINICS;
ESTABLISHING BUSINESS REGULATIONS; REQUIRING
REGISTRATION OF ALL PAIN CLINICS; ESTABLISHING
REGISTRATION REQUIREMENTS; CREATING
ADMINISTRATIVE PROCEDURE FOR REVIEW OF
REGISTRATION APPLICATIONS; REQUIRING INCLUSION
OF REGISTRATION NUMBER ON ADVERTISING FOR PAIN
CLINICS; ESTABLISHING ZONING REGULATIONS;
PROVIDING FOR NUISANCE ABATEMENT AND CODE
ENFORCEMENT; AMENDING CHAPTER 8CC OF THE
CODE OF MIAMI-DADE COUNTY, FLORIDA;
ESTABLISHING DEFINITIONS; PROVIDING
SEVERABILITY, INCLUSION IN THE CODE, AND AN
EFFECTIVE DATE

WHEREAS, pursuant to the Miami-Dade County Home Rule Charter, the Board of County Commissioners is authorized to enact regulations for the protection of the health, safety, and welfare of the residents of Miami-Dade County; and

WHEREAS, protection of the public health, safety, and welfare is a legitimate public purpose recognized by the courts of Florida and the United States; and

WHEREAS, there are a number of pain clinics in Miami-Dade County; and

WHEREAS, on August 2, 2011, pursuant to Ordinance 11-61, the Board of County Commissioners created a Pain Clinic Task Force, to review and make recommendations to this Board on issues and complaints surrounding pain clinics and the need for additional regulation of pain clinics in Miami-Dade County to address any adverse impact; and

WHEREAS, on November 28, 2011, the Pain Clinic Task Force submitted its final report and recommendations to this Board; and

WHEREAS, the Pain Clinic Task Force recommendations addressed concerns with respect to clarity of registration requirements, ensuring due process rights in the event of denial, suspension, or revocation of registration, , and setting forth specific enforcement mechanisms; and

WHEREAS, the Pain Clinic Task Force recommended zoning and nuisance abatement regulations to enhance the ability of County departments to coordinate with each other in addressing the impacts pain clinics may have on the community; and

WHEREAS, since the implementation of the Pain Clinic Ordinance, Miami-Dade County has successfully implemented the registration program, and has worked with the Florida Department of Health to ensure full compliance by the clinics, resulting in a substantial reduction of clinics operating in Miami-Dade County; and

WHEREAS, on August 2, 2011, at the time the Pain Clinic Ordinance was adopted there were 109 pain clinics operating in Miami-Dade County, currently, due to changes in Florida law and enforcement of existing County regulations, only 53 registered, legally operating clinics remain; and

WHEREAS, this Board deems it is in the best interest of the residents of Miami-Dade County to enact an ordinance amending regulations related to pain clinics and their impacts on the community,

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

Section 1. Article XX of Chapter 8A of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

ARTICLE XX. PAIN MANAGEMENT CLINICS

>>Sec. 8A-411. Applicability.

The provisions of this article shall be applicable in the incorporated and unincorporated areas of Miami-Dade County.<<

Sec. ~~[[8A-411]]>>8A-412<<. Definition.~~

>>(a)<<“*Pain* ~~[[Clinic]]>>clinic<<” and “~~[[Pain]]>>pain<< [[Management]]>>management<< [[Clinic]]>>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 F.S. §§ 458.3265(1) and 459.0137(1), as amended, or any successor state law. >>This definition is to be interpreted by the scope of business operations, medical or otherwise, regardless of name.~~~~

(b) “Department” means the Department of Regulatory and Economic Resources or successor agency.

(c) “Director” shall refer to the Director of the Department of Regulatory and Economic Resources or his or her designee.<<

Sec. ~~[[8A-412]]>>8A-413<<. Registration.~~

(a) All pain clinics operating within the geographic boundaries of Miami-Dade County shall register with ~~[[Miami-Dade County's]]~~ >>the Department’s Business Affairs<< ~~[[Consumer Protection]]~~ ~~[[Department]]~~ >>Division<< immediately upon issuance of implementing policies and procedures which shall occur no later than ninety (90) days from the effective date of this ordinance, and annually thereafter.

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.

- (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]]~~ >>Business Affairs ~~<< [[Consumer—Protection]]~~ >>Division~~<<~~ of the Department.

Sec. ~~[[8A-413]]~~>>8A-414~~<<~~. **Designated department.**

- (a) The ~~[[Miami-Dade]]~~ >>Business Affairs ~~<<[[Consumer Protection]]~~ >>Division of the ~~<<~~ 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 reasonable fee for processing the applications and maintaining the database.
- (b) The >>Business Affairs Division of the~~<<~~ Department shall establish policies and procedures necessary to implement the registration process, maintain the database, enforce the ordinance, and through an implementing order, charge reasonable fees.
- (c) The >>Business Affairs Division of the~~<<~~ Department is authorized to inspect any pain clinic for proof of registration at any reasonable hour without prior notice.

Sec. ~~[[8A-414]]~~>>8A-415~~<<~~. **Application; review.**

- >>(a) Every application for registration of a pain clinic shall be in writing, signed and verified by the applicant, and filed with the Business Affairs Division of the Department of Regulatory and Economic Resources together with all applicable fees as established by implementing order approved by the Board of County Commissioners. Fees shall be non-refundable, shall be deposited in a separate Miami-Dade County fund, and shall be used exclusively to accomplish the purposes of this article. The amount of the fees shall be reasonably related to the cost of the services and regulation provided.

(b) Each application for registration shall include the following information:

- (1) Sufficient information to identify the applicant, including but not limited to, full legal name, date of birth or date of formation of legal entity, telephone numbers, and all business and residence addresses. Post office box addresses shall not be accepted. If the applicant is a corporation, the foregoing information shall also be provided for each corporate officer, director, registered agent and shareholder. If the applicant is a partnership, the foregoing information shall also be provided for each general and each limited partner.
- (2) A list of all persons who have any ownership interest in the pain clinic that is the subject of the application who have previously been denied a license for operation of a pain clinic.
- (3) The property owner's name, address and telephone number, and a copy of the lease agreement if property owner is different than the clinic owner.
- (4) Copy of county business tax receipt.
- (5) Copy of municipal business tax receipt, if appropriate.
- (6) Photocopy of the valid certificate of use and occupancy for the property, indicating authorization for the operation of a pain clinic. A valid certificate of use may be submitted within 60 days following the approval of an application where the zoning authority requires proof of this registration for issuance of the certificate.
- (7) Articles of Incorporation and Fictitious Name Registration (if appropriate).
- (8) Such other information as the Director shall require to enforce the provisions of this article.<<

[[a]] >>(c)<<[[Any pain clinic operating in Miami Dade County shall file—a]] >>The<< sworn and notarized application [[which]]shall >>also<< include proof of the following:

- (1) That the applicant is registered with the State Department of Health as required by state law and is in good standing with the Department of Health, has not received notification of a pending investigation by the Department of Health, has not received a probable cause finding as a result of a Department of Health investigation, is not currently suspended, and has not received notice of any deficiencies from the most recent Department of Health inspection >>; applicant shall provide a copy of the most recent Department of Health inspection reports and demonstrate correction of all noted deficiencies;<<

* * *

- (4) Ownership, >>employment or any verbal or written contractual relationship<< in other pharmacies or pain clinics and the percentage of such ownership by any and all physicians who own the clinic seeking registration.

* * *

[[b]]>>(d)<<The Department may require any physician identified in subsection (a)(6) to complete an in-person interview to verify the information in the application and/or notarized statement.

- >>(e) A person operating a pain clinic at more than one (1) location in Miami-Dade County, Florida, shall file a separate application for registration annually for each location, together with all other information required by this article. Application and registration fees shall be required for each pain clinic location.<<

[[e]]>>(f)<< 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 subsection (a) above.

- (1) If the applicant satisfies all the criteria in subsection (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]]~~ >>an abandonment<< of the application. The Department shall notify the applicant of the ~~[[withdrawal]]~~ >>abandonment<< 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. >>An application submitted subsequent to the abandonment of a former application shall be treated as a new application.<<

~~[[(3) If the applicant does not satisfy the criteria in subsection (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.]]~~

>>(3) A pain clinic registration shall become effective upon the date the application is approved by the Director. Notwithstanding any provision in this article, the Director may stagger the registration over an annual period, may shorten or extend the one-year period to facilitate the workload, and

prorate the fee accordingly. A pain clinic registration shall be renewed annually by the pain clinic. A pain clinic shall file the application for renewal of the registration with the Director no later than thirty (30) days prior to the expiration of the registration of the pain clinic.

- (4) A pain clinic may continue to operate after the expiration date of the registration, pending approval of the renewal application by the Director, if the completed renewal application with applicable fees has been received by the Director on or before the expiration date. If a completed renewal application with applicable fees is filed after the expiration date, the pain clinic may operate from and after the date on which the completed application with applicable fees is received by the Director, pending approval of the renewal application by the Director.<<

>>Sec. 8A-416. Denial, Revocation or Suspension of Registration.

- (1) The Director may deny, revoke, or suspend a registration issued pursuant to the provisions of this article upon a determination that the pain clinic applicant, owner, designated physician or associated physician:
- (a) has failed to meet or maintain the minimum registration requirements set forth in this article, or
 - (b) has violated any provision of this article, or
 - (c) has misrepresented or concealed a fact on the application, renewal application, or replacement application for a registration, or
 - (d) has aided or abetted a person who has not obtained a registration to evade or avoid the provisions of this article, or
 - (e) has engaged in any conduct as part of the provision of pain management clinic services which constitutes fraud, or

- (f) has violated any condition, limitation, or restriction of a registration imposed by the Director, or
 - (g) was enjoined by a court of competent jurisdiction from engaging in the trade or business of pain management services or was enjoined by a court of competent jurisdiction with respect to any of the requirements of this article, or
 - (h) where the person is a corporation or partnership, a stockholder, officer, director, or partner thereof has committed an act or omission which would be a cause for denying, revoking, or suspending a registration, certificate, or permit issued to the officer, director, stockholder, or partner as an individual, or
 - (i) failed to comply with the terms of a cease and desist order, notice to correct a violation, written assurance of compliance, or any other lawful order of the Director, or
 - (j) was convicted of a violation of this article.
 - (k) has been declared a public nuisance by order of the Nuisance Abatement Board.
- (2) The foregoing notwithstanding, no revocation or suspension of a registration by the Director shall be effective until final disposition of the appeal, if any, of such action pursuant to Section 8A-417of the Code of Miami-Dade County, Florida, or until the time period for filing such appeal has expired, whichever is later.
- (3) In addition to the foregoing, a registration issued pursuant to this article shall be automatically suspended when the Director shall receive written notification that the registrant's owner, designated physician, associated physician, responsible employee, officer, director or partner, or any other stockholder owning, holding, controlling or having beneficial interest in five (5) percent or more of the issued and outstanding stock of the registrant or of the issued and outstanding stock of a corporate partner of a partnership licensee, has had their license suspended or revoked by the Florida Department of Health, or a court of

competent jurisdiction, or has been convicted of an offense as listed in Section 8A-414, or any other offense that would disqualify them from being registered by the County or State Department of Health at this or any other pain management clinic. Any person regulated by this article who is aggrieved by the automatic suspension of a registration pursuant to this section may appeal that suspension as provided in section 8A-416 of this Code.

Sec. 8A-416.1. Administrative appeals from actions, decisions or determinations of the director; judicial review.

- (a) Any person regulated by this article who is aggrieved by any action, decision or determination of the Director made pursuant to this article may appeal the action, decision or determination to an administrative hearing officer. Any aggrieved person seeking to appeal an action, decision or determination of the Director shall file with the Director a written notice of appeal which shall set forth the nature of the action, decision or determination to be reviewed and the basis for appeal within five (5) days after publication of the complained of action, decision or determination. A timely request for administrative hearing shall be scheduled and heard by a hearing officer pursuant to Section 8CC of the Code of Miami-Dade County, Florida. Pain clinic customers shall not be deemed to be persons regulated by this article for the purposes of this section. The hearing officer shall set the matter for hearing on the earliest practicable regularly scheduled hearing date or as soon as possible thereafter, but no sooner than ten (10) days after the request has been filed, and shall cause notice of the hearing to be served upon the aggrieved party by first class mail. The notice may include, but not be limited to, the applicable Sections of 8CC-6(b)(2) through (9) of the Code of Miami-Dade County, Florida. The hearing officer shall hear and consider all relevant facts in accordance with the procedures set forth in Sections 8CC-6(e), (f), (g), (i), (j), (k), (l), (m)(2), and (n) of the Code of Miami-Dade County (any reference in these sections to Inspector shall mean "Director;" "violator" shall mean "the person filing the appeal"), and may affirm, modify or reverse the action, decision or determination of the Director. The decision of the hearing officer shall constitute final administrative review and no rehearing shall be permitted. Nothing herein

shall be construed to prevent or prohibit the Director from instituting any civil or criminal action or proceeding authorized by this article at any time.

- (b) The Director, the Miami-Dade County Consumer Advocate, or any person regulated by this article who is aggrieved by any decision of the hearing officer may appeal a final order of the hearing officer by filing a petition for writ of certiorari in the Circuit Court in and for Miami-Dade County, Florida, in accordance with procedures and within the time allowed by the Florida Rules of Appellate Procedure for review of administrative action. The words "action," "decision" and "determination" as used herein shall not include the filing or commencement of any action, conference or proceeding by the Director in any court or otherwise. Pain clinic customers shall not be deemed to be persons regulated by this article for the purposes of this section.
- (c) Failure to timely file a request for an administrative appeal or petition for certiorari shall result in the forfeiture of any additional right of appeal and the administrative action shall become final.

Sec. 8A-416.2. Requiring pain clinic registration number on all advertising.

- (a) No person, firm, corporation or other legal entity may knowingly publish an advertisement which is primarily circulated, displayed, distributed or marketed within Miami-Dade County, which advertisement offers services regulated by Chapter 8A, Business Regulations, Article XX "Pain Management Clinics," Code of Miami-Dade County, Florida, as it may be amended from time to time, unless the advertisement includes the pain clinic registration number issued by Miami-Dade County to that entity.
- (b) Advertisement shall include all media, including, without limitation, free and paid listings in telephone directories, business forms, business cards, flyers, radio, television and internet ads, signs, announcements, displays, entries or other written statements containing the name of the registrant or identifying the services offered by the registrant or by a person regulated by this chapter.<<

Sec. ~~[[8A-415]]~~ >>8A-416.3.<< ~~[[Violation.]]~~>>Enforcement procedure; remedies; attorney's fees; costs.<<

- (a) It shall be unlawful for any person to operate a pain clinic without >>a valid<< registration. Violations shall be enforced through and in accordance with Chapter 8CC of the Miami-Dade Code. >>In addition to any other judicial or administrative remedies provided by law, rule, regulation, ordinance, or this article, the Director shall have the following judicial remedies available to enforce the provisions of this article:
- (1) The Director may institute a civil action in a court of competent jurisdiction for injunctive relief to enforce compliance with or prohibit the violation of any of the provisions of this article.
 - (2) The Director may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty in an amount of not more than \$10,000.00 for each violation of any of the provisions of this article. For the purposes of this subsection, each day during any portion of which such violation occurs or continues to occur constitutes a separate violation. The right of trial by jury shall be available in any court to determine both liability for and the amount of the civil penalties to be imposed and recovered hereunder.
 - (3) The Director may institute a civil action in a court of competent jurisdiction to seek restitution and other equitable relief to recover any sums and costs expended by the Director for enforcement of the provisions of this article and any related investigation.<<
- (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 article and to seek appropriate remedies. In any such action the department shall be entitled to recover its reasonable costs in the enforcement of this article, including reasonable attorney fees.]]~~ >>Upon the rendition of a judgment or decree by any court of this state against any person and in

favor of the Director under any provision of this article, the trial court, or, in the event of an appeal in which the Director prevails, the court may award costs and an appropriate attorney's fee. This provision shall apply to all civil actions, legal or equitable, filed after the effective date of this article by the Director. Cessation of any violation of any of the provisions of this article whatsoever, prior to rendition of a judgment or entry of a temporary or final decree, or prior to execution of a negotiated settlement, but after an action is filed by the Director under any of the provisions of this article, shall be deemed the functional equivalent of a confession of judgment or verdict in favor of the Director, for which attorney's fees shall be awarded by the trial court as set forth hereinabove.

(c) All the judicial and administrative remedies in this article are independent and cumulative.<<

Sec. ~~[[8A-416.]]~~ >> 8A-416.4.<< Temporary moratorium

* * *

Section 2. Article XIII A of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

ARTICLE XIII A. NUISANCE ABATEMENT

Sec. 2-98.4. Legislative findings and intent.

* * *

Sec. 2-98.5. Definitions.

For the purpose of this article the following definitions shall apply:

>>A.<<Public nuisance: Any place or premise>>g<< which has been used

>>(1) by a youth and criminal street gang for the purpose of conducting a pattern of youth and criminal street gang activity, or

(2) << on more than two (2) occasions within a twelve month period:

[[1]] >>(a) << As the site of the unlawful sale>>₂<< [[or]] delivery>>, manufacture, cultivation, or possession<< of controlled substances >>(including, but not limited to substances and pharmaceuticals defined and regulated under Federal controlled substance laws, Florida Statutes, Chapters 893, and 499, any substance sold in lieu of a controlled substance in violation of Florida Statutes Section 817.563 or any imitation controlled substance defined in Section 817.564), << or

[[2]] ~~By a youth a street gang for the purpose of conducting a pattern of youth and street gang activity, or]~~

[[3]] >>(b) As the site of<< [[for]] prostitution, or solicitation of prostitution, >>or any violation of Florida Statutes Chapter 796, as it may be renumbered or amended from time to time, <<or

[[4]] >>(c) As the site of<< [[for]] illegal gambling, or

[[5]] >>(d) As the site of<< [[for]] the illegal sale>>₁<< [[or]] consumption>>₂<< or >>possession<< of alcoholic beverages>>, containers, or open containers,<< or

[[6]] >>(e) As the site of<< [[for]] lewd or lascivious behavior, or

>>(f) As the site of Violations of Florida Statute 812.019, Dealing in Stolen Property, as it may be renumbered or amended from time to time, or<<

[[7]] >>(g) <<Any premise>>_s<< or place >>that could be<< declared to be a nuisance by Florida Statutes, Section 823.05 or Section 823.10 as they may be renumbered or amended from time to time, >>or

- (h) Any pain-management clinic, as described in s. 458.3265 or s. 459.0137 of the Florida Statutes, which has been used on more than two occasions within a 6-month period as the site of a violation of:
- (i) Section 784.011, s. 784.021, s. 784.03, or s. 784.045 of the Florida Statutes, relating to assault and battery;
- (ii) Section 810.02 of the Florida Statutes, relating to burglary;
- (iii) Section 812.014 of the Florida Statutes, relating to dealing in theft;
- (iv) Section 812.131 of the Florida Statutes, relating to robbery by sudden snatching; or
- (v) Section 893.13 of the Florida Statutes, relating to the unlawful distribution of controlled substances,

may be declared to be a public nuisance, and such nuisance may be abated pursuant to the procedures provided in Article XIII A of the Code of Miami-Dade County .

- B. Evidence means any complaint, as defined in Paragraph B below, or findings of fact and conclusions of law of any federal, state, or local court or administrative entity. Evidence of violations of other federal, state, or local public nuisance laws, or other laws where a violation may create a danger to the public, health, safety, and welfare, or the failure to comply with the requirements, terms, and agreements in conjunction with these laws may be used to supplement and/or provide evidence of a public nuisance against a Premises in a Nuisance Abatement Board Hearing.
- C. Complaint means a complaint and/or incident documented on local, state, or federal law enforcement report, police report, incident report, arrest report, Uniform Civil

Violation Notice, warning notice, notice of violation, notarized affidavit, or oral or written sworn statement documenting an incident(s) or reasonable belief (as substantiated by local, state, or federal law enforcement, judicial, or government officials) that any of the above types of activities are occurring.

- D. Owner shall include the Property Owner/Property Manager and Business Owner/Manager as applicable.
- E. Places/Premises shall include, but not be limited to, any residential property, business property, farm land, land, vacant lot, parking area, vessel, vehicle, area controlled by a homeowner or condominium or other similar association, or other property that comes within the control of a business, or business enterprise, or other activity associated with a business.
- F. Occasion shall be defined as any single instance and/or occurrence where there is evidence of ongoing nuisance activity or the receipt of a documented, substantiated complaint where the evidence shows that the activity was occurring on more than one day. Each instance and/or day of activity shall constitute a separate occasion/incident.<<

Section 3. Chapter 33, Article I, of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

ARTICLE I. IN GENERAL.

Section 33-1. Definitions.

* * *

>>(78.1) Pain clinic and pain management clinic (hereinafter “pain clinics”) shall have the same meanings and same exemptions as provided in Florida Statutes, §§ 458.3265(1) and 459.0137(1), as amended, or any successor state law. This definition is to be interpreted by the scope and nature of business operations, medical or otherwise, regardless of name.<<

[[78.1]]>>78.2<<A physically handicapped or disabled person shall mean a person who has a physical or mental impairment which

substantially limits one (1) or more major life activities or who has a record of having, or is regarded as having, such physical or mental impairment.

~~[[78.2]]~~>>78.3<<*Pet Care Centers*. The term "pet care center" shall mean a business establishment, operating during daytime hours only, that provides supervised care for cats or dogs in an air conditioned indoor facility for the purpose of the animal's general well-being including supervised interaction with other animals, feeding and grooming services. A pet care center shall not include breeding services.

* * *

Section 4. Chapter 33, Article XB of the Code of Miami-Dade County, Florida, is hereby created as follows:

>>ARTICLE XB PAIN CLINICS

Sec. 33-151.23 Pain clinics.

Notwithstanding any other provision of the Miami-Dade County Code of Ordinances that allows medical clinics, doctors' offices, or pharmacies, as a permitted use in any other zoning district, pain clinics, as defined by section 33-1 (78.1), or successor legislation, shall be permitted only after approval as special exception, in the BU zoning district. In order to provide adequate protection to the community and establish the legitimacy of the business, the following regulations shall apply to the location, design, operation, and maintenance of pain clinics, and shall be in addition all other requirements or limitation of the Code of Miami-Dade County:

- (a) A certificate of use, in accordance with Chapter 33-8, shall be obtained from the zoning official prior to the establishment of any pain clinic.
- (b) The application for a certificate of use for a pain clinic shall disclose, in detail, the owners and operators of the facility, and shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to section 458.3265 or section 459.0137, Florida Statutes, as amended.

- (c) The pain clinic owner/physician/manager shall register with the Business Affairs Division of the Miami-Dade County Department of Regulatory and Economic Resources and meet all registration requirements. The applicant shall provide to the County proof of registration with the Florida Department of Health, pursuant to F.S. §§ 458.3265 or 459.0137, as amended, prior to the issuance of a certificate of use for the business. If the registration of a pain clinic is revoked or suspended by the Florida Department of Health or the office of the Business Affairs Division of the Miami-Dade County Department of Regulatory and Economic Resources, the County's certificate of use shall be revoked automatically.
- (d) The application for a certificate of use shall include an affidavit by the owner or the physician of record pursuant to F.S. §§ 458.3265 or 459.0137, as amended, attesting to the fact that no employee of the business, nor any independent contractor or volunteer having regular contact with customers of the business, has been convicted of a drug-related felony within the five (5) year period prior to the date of the application, and that the business shall not employ or allow any such convicted employee, independent contractor, or volunteer on the premises thereafter.
- (e) A pain clinic shall be limited to the hours of operation between 8:00 a.m. and 7:00 p.m., Monday through Saturday.
- (f) A pain clinic shall post the required certificate of use in a conspicuous location at or near the entrance to the facility so that it may be easily read at any time.
- (g) No pain clinic shall be permitted to be located within one thousand two hundred (1,200) feet of a school, church, another pain clinic, or a pharmacy with direct or indirect ownership links to the owner/physician/manager of the pain clinic.
- (h) A pain clinic shall comply with section 33-124 (m) of the Code of Miami-Dade County establishing parking standards for office and professional buildings.
- (i) Pain clinic are prohibited from having any outdoor seating areas, queues, or customer waiting areas. All activities of

the pain clinic, including sale, display, preparation, and storage, shall be conducted entirely within a completely enclosed building.

- (j) The pain clinic shall have adequate medical examination rooms and equipment to conduct physicals within acceptable medical and sanitary standards as required by the Florida Department of Health for those medications being prescribed.
- (k) Pain clinics may not dispense or distribute prescribed drugs pursuant to sections 458.3265 or 459.0137 of the Florida Statutes, as amended.
- (l) That the owner of the premises where the pain clinic is located shall be provided written notification of the type of business and provide written sworn authorization for such use of the subject premises.
- (m) The businesses shall obtain building permits and install adequate fire and safety protection, including electrical, plumbing, structural, alarms (Fire, smoke, carbon monoxide, building security & burglary, and hold-up alarms) to provide for the public health, safety, welfare, and protection of the people, confidential records, prescription devices, medicines, and samples of medicines.
- (n) The pain clinic shall be in compliance with all requirements in sections 458.3265 or 459.0137 of the Florida Statutes, as amended, regarding physician requirements, registration requirements, and any suspensions or revocations of licenses or physician licenses.
- (o) No sale, possession (including containers or open containers), or consumption of alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks, or right-of-way. The pain clinic shall take all necessary and immediate steps to ensure compliance with this paragraph.
- (p) With the exception of subsections (g) and (h), all pain clinics legally in existence prior to the effective date of this section shall comply with the requirements herein within sixty (60) days of the effective date of this section. Any pain clinic legally in existence prior to the effective date of

this section, but now in violation of its provisions due to the pain clinic's failure to meet the requirements of subsections (g) and (h), shall be considered a legal nonconforming use,

- (q) If at any time the County determines that a pain clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this chapter or any other applicable code or statute, including licensing and inspection requirements of the Florida Department of Health, state, and federal statutes, and Miami-Dade County Code, the County may revoke the certificate of use.<<

Section 5. Chapter 33, Article XXIV, of the Code of Miami-Dade County, Florida, is

hereby amended to read as follows:

ARTICLE XXIV. BU-1, NEIGHBORHOOD BUSINESS DISTRICT

Sec. 33-237. Purpose.

The purpose of the BU-1, Neighborhood District, is to provide for retail and service convenience facilities which satisfy the essential and frequent needs of the adjacent residential neighborhood.

Sec. 33-238. Uses permitted.

No land, body of water or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any BU-1 District, which is designed, arranged or intended to be used or occupied for any purpose, except for one (1) or more of the following uses:

* * *

- >>(26.1) Pain clinic, subject to approval at public hearing, and subject to all the restrictions and spacing requirements contained in Article XB, section 33-151.23<<

* * *

Section 6. Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 8CC-10. Schedule of civil penalties.

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

*	*	*
Code Section	Description of Violation	Civil Penalty
2-8.1	Disclosing false information	\$500
*	*	*
>>8A-414(a)	<u>Failure to allow inspection</u>	<u>500.00</u> <<
>>8A-416.2	<u>Failure to include registration number in advertisement</u>	<u>500.00</u> <<
8A-416.3	Operating a pain clinic without >>valid<< [[prior]] registration	500.00
*	*	*
>>33-151.23 (a)	<u>Failure to obtain a certificate of use prior to establishment of a pain clinic</u>	<u>500.00</u> <<
>>33-151.23 (e)	<u>Violation of hours of operation for pain clinics</u>	<u>500.00</u> <<
>>33-151.23(f)	<u>Failure to conspicuously post certificate of use for pain clinic</u>	<u>500.00</u> <<

- | | | |
|-------------------------|--|------------------|
| >> <u>33-151.23 (g)</u> | <u>Pain clinic located within 1,200 feet of another pain clinic or with direct or indirect ownership link to pain clinic</u> | <u>500.00</u> << |
| >> <u>33-151.23(h)</u> | <u>Failure to comply with parking standards for pain clinic</u> | <u>500.00</u> << |
| >> <u>33-151.23 (i)</u> | <u>Failure to conduct pain clinic activities, including seating, queues, or customer waiting areas, from within a completely enclosed building</u> | <u>500.00</u> << |
| >> <u>33-151.23 (j)</u> | <u>Failure of pain clinic to have adequate medical examining rooms and equipment to conduct physical examinations</u> | <u>500.00</u> << |
| >> <u>33-151.23 (m)</u> | <u>Failure to obtain building permit for pain clinic</u> | <u>500.00</u> << |
| >> <u>33-151.23 (o)</u> | <u>Sale, possession (including, but not limited to containers, open containers), or consumption of alcoholic beverages on grounds of pain clinic</u> | <u>500.00</u> << |

* * *

Section 7. 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 8. 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 9. 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:



John McInnis

Prime Sponsor: Commissioner Barbara J. Jordan