


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.<sup>1</sup> 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

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<sup>1</sup> 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.

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.

- 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.<sup>2</sup> 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

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<sup>2</sup> 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.

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.

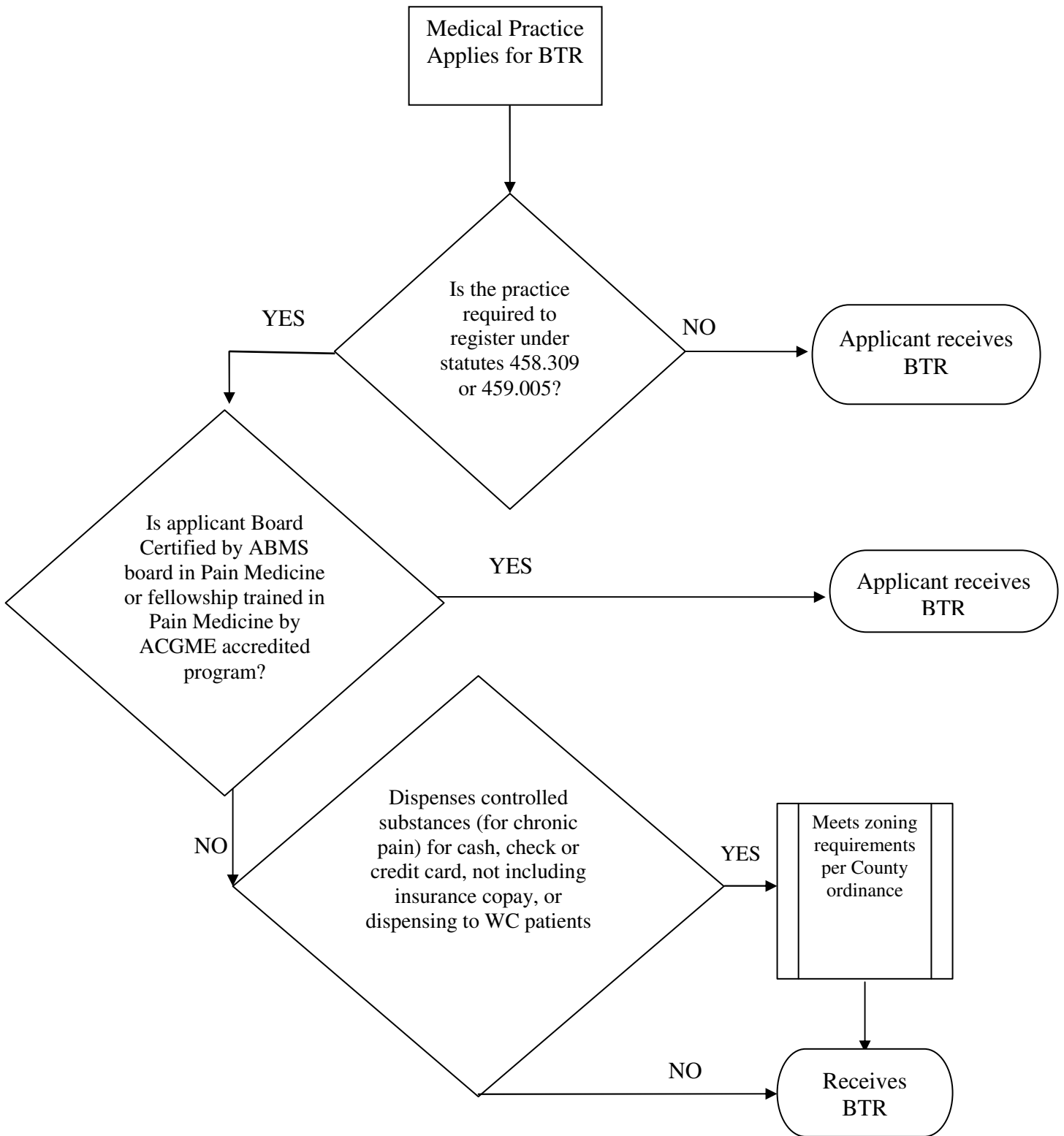
We are not aware of any Florida case law addressing moratoria on pain management clinics. However, the Interim Report of the Broward County Grand Jury regarding the "The Proliferation of Pain Clinics in South Florida," dated November 19, 2009 set out facts which would provide some support for a moratorium. 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

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**

<b><u>Dania Beach</u></b>	
<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.
<b><u>Deerfield Beach</u></b>	
<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.
<b><u>Delray Beach</u></b>	
	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**

<b>Hallandale Beach</b>	
<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.
<b>Hollywood</b>	
<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.
<b>Pembroke Pines</b>	
<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**

<b>Pompano Beach</b>	
<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.
<b>Tampa</b>	
<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.
<b>Wellington</b>	
<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.
<b>Weston</b>	
<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**

<b>Hillsborough County</b>	
<b>Application</b>	Detailed application procedure with various disclosure requirements.
<b>License Requirements</b>	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.
<b>Palm Beach County</b>	
<b>Parking</b>	1 space per 200 sq. ft.
<b>Pinellas County</b>	
<b>Registration</b>	(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.
<b>Application</b>	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**

<b><u>Municipality</u></b>	<b><u>Ordinance / Legislation Type</u></b>	<b><u>Definition Type (A-I)</u></b>
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
<b><u>County</u></b>		
Broward County	Moratorium	D
Hillsborough County	License, Hours of Operation, Inspection	C
Palm Beach County	Zoning, Parking, Moratorium	A
Pinellas County	Application, Inspection	A
<b><u>State</u></b>		
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.