



BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

PLACEMENT: PUBLIC HEARINGS

PRESET:

TITLE: PAIN MANAGEMENT CLINICS LAND DEVELOPMENT REGULATIONS

AGENDA ITEM DATES:

MEETING DATE: 2/22/2011	COUNTY ATTORNEY: 1/31/2011
COMPLETED DATE: 2/10/2011	ASSISTANT COUNTY ADMINISTRATOR: 2/7/2011

REQUESTED BY:	DEPARTMENT:	PREPARED BY:
Name: Martin County Board of County Commissioners	Growth Management	Joseph Banfi
Name:		Principal Planner

Procedures: None

EXECUTIVE SUMMARY:

An Ordinance of Martin County, Florida, amending Section 33.3 Glossary of Terms, Section 3.11. Permitted Uses, and Division 3. Standards for Specific Uses, Article 3, Zoning Districts, Land Development Regulations, Martin County Code; providing regulations for pain management clinics; providing for applicability, conflicting provisions and severability; providing for filing with the Department of State, codification, and an effective date. This is the second of two required public hearings.

APPROVAL:

LEG
ACA
CA

BACKGROUND/RELATED STRATEGIC GOAL:

This item heard by the Board at the first public hearing on February 8, 2011. At that hearing, the Board directed changes to the ordinance. A supplemental memorandum, including revisions directed by the Board to the proposed LDR and a staff recommendation, will be provided to the Board prior to the meeting.

ISSUES:

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RECOMMENDED ACTION:

RECOMMENDATION

Click here to enter text.

ALTERNATIVE RECOMMENDATIONS

FISCAL IMPACT:

RECOMMENDATION

Click here to enter text.

Funding Source	County Funds	Non-County Funds	Authorization
Subtotal			

Project Total	
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ALTERNATIVE RECOMMENDATIONS

DOCUMENT(S) REQUIRING ACTION:

<input type="checkbox"/> Budget Transfer / Amendment	<input type="checkbox"/> Chair Letter	<input type="checkbox"/> Contract / Agreement
<input type="checkbox"/> Grant / Application	<input type="checkbox"/> Notice	<input type="checkbox"/> Ordinance
		<input type="checkbox"/> Resolution

Other:

ROUTING:

_ ADM	_ BLD	_ CDD	_ COM	_ ENG	_ FRD	_ GMD
_ GSD	_ ITS	_ LIB	_ MCA	_ MPO	_ PRD	_ USD
X CA	X ACA	X LEG				

**MARTIN COUNTY, FLORIDA
SUPPLEMENTAL MEMORANDUM**

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

VIA: Taryn Kryzda
County Administrator

FROM: Nicki van Vonno, AICP
Growth Management Director

REF:
SUBJECT: Pain Management Clinics Land Development Regulations

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

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

Recommendation

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

Alternative Recommendation

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

Reviewed by Stephen Fry, County Attorney

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

ORDINANCE NUMBER ____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3.3. - Glossary of terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3.11. Permitted uses.

TABLE 3.11.2
PERMITTED USES - CATEGORY "A" NONRESIDENTIAL DISTRICTS

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

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

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

DIVISION 3, STANDARDS FOR SPECIFIC USES

Sec. 3.86.1. Pain management clinics

Sec. 3.86.1.A. General requirements

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

Sec. 3.86.1.B. Location.

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

Sec. 3.86.1.C. Distance requirements.

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

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

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

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

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

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

Sec. 3.86.1.C. Other regulations.

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

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

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

Sec. 3.86.1.D. Signage.

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

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

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

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

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

Sec. 3.86.1.D. Landlord Responsibilities.

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

PART 2: APPLICABILITY OF ORDINANCE.

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

PART 3: CONFLICTING PROVISIONS.

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

PART 4: SEVERABILITY.

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

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

PART 5: FILING WITH THE DEPARTMENT OF STATE.

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

PART 6: CODIFICATION.

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

PART 7: EFFECTIVE DATE

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

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

MARSHA EWING
CLERK OF THE CIRCUIT COURT

EDWARD CIAMPI, CHAIRMAN

APPROVED AS TO FORM AND
CORRECTNESS:

STEPHEN FRY
COUNTY ATTORNEY