

ORDINANCE NO. C-11-14

AN ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, CREATING ARTICLE IX, PAIN MANAGEMENT CLINIC, CHAPTER 15, BUSINESS TAX RECEIPTS AND MISCELLANEOUS BUSINESS REGULATIONS, ESTABLISHING REGULATIONS RELATING TO THE DISPENSING OF CONTROLLED SUBSTANCES; AMENDING SECTION 47-35 DEFINITIONS, AND SECTION 47-6 BUSINESS ZONING DISTRICTS AND 47-20 PARKING AND LOADING REQUIREMENTS TO PROVIDE DEFINITIONS OF A PHARMACY, TO PROVIDE REGULATIONS AND IDENTIFY ZONING DISTRICTS WHERE PAIN MANAGEMENT CLINICS ARE PERMITTED AND PROVIDE FOR PARKING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Fort Lauderdale is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the public health, safety and welfare is a legitimate public purpose of the City of Fort Lauderdale; and

WHEREAS, the City of Fort Lauderdale has received evidence pertaining to the proliferation of pain management clinics in the City of Fort Lauderdale and in Broward County, prescription drug abuse, deaths associated with such abuse and crimes stemming from such abuse; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the Broward County Grand Jury issued a report on "The Proliferation of Pain Clinics in South Florida" after an investigation and review of pain clinics and the effect on Broward County and found that the number of pain clinics increased from 4 to 176 in two years in South Florida and that 9 million dose units of Oxycodone were dispensed every 6 months, and that burglaries and robberies in areas where pain clinics were located increased along with drug trafficking in prescription drugs; and

WHEREAS, Broward County formed a Pain Management Clinic Task Force that reviewed the issues involving pain management clinics and issued a final report which included recommendations as to licensing and locations of pain management clinics on January 13, 2011; and

WHEREAS, the Broward County Pain Management Clinic Task Force concluded that the proliferation of pain management clinics has become a significant health, safety and general welfare problem for the citizens of Broward County and recommended implementation by the State of Florida of the Prescription Drug Monitoring Programs, standards of practice of medicine for pain management physicians by the Department of Health and regulation of pain management clinics by the County and local governments; and

WHEREAS, the State of Florida Attorney General's Office, Special Prosecutor Dave Aronberg, has identified prescription drug abuse and deaths in the State of Florida directly related to pain management clinics and an increase in pain clinics in Broward County from 4 in 2007 to 144 in 2010; and

WHEREAS, the City of Fort Lauderdale Police Department has reported from February, 2010 through October, 2010 that 57 arrests were made and directly related to prescription narcotics at or near 8 pain clinics in the City, with 681 grams of Oxycodone confiscated, and \$65,261 in cash seized; and

WHEREAS, the City of Fort Lauderdale previously adopted an ordinance establishing a moratorium on the submission, processing and issuance of business tax receipts for the operation of pain management clinics to study the issues identified above and also to determine the necessary regulations for operation of pain management clinics in the City of Fort Lauderdale; and

WHEREAS, the City Commission finds it is in the best interests and welfare of the citizens of the City of Fort Lauderdale to enact this ordinance regulating pain management clinics in the City of Fort Lauderdale;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Article IX, Pain Management Clinics, of Chapter 15, Business Tax Receipts and Miscellaneous Business Regulations, of the Code of Ordinances of the City of Fort Lauderdale is hereby created to read as follows:

CHAPTER 15  
BUSINESS TAX RECEIPTS AND MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE IX. PAIN MANAGEMENT CLINICS

Sec. 15 –250. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Controlled substance medication.* Any controlled substances identified in Schedules I, II, III or IV of Sections 893.03, 893.035, 893.0355 or 893.0356, Florida Statutes, as amended.

*Chronic nonmalignant pain.* Pain unrelated to cancer or rheumatoid arthritis, which persists beyond the usual course of the disease or injury that is the cause of the pain, or more than ninety (90) days after surgery.

*Medical Director.* The physician licensed by the State of Florida with a full, active and unencumbered license under Florida Statutes Chapters 458 or 459 who shall be the designated physician responsible for complying with all requirements to the permitting and operation of the pain management clinic as defined by Florida Statutes Sections 458.3265(1)(c) or 459.0137(1)(c), as may be amended.

*Pain Management Clinic.* Any publicly or privately owned clinic, facility or office that advertises in any medium for any type of pain management services; or employs a physician who is primarily engaged in the treatment of chronic nonmalignant pain by prescribing or dispensing controlled substance medications at the clinic and which clinic is required to be (and is) registered with the Florida Department of Health pursuant to Section 458.3265, or 459.0137, Florida Statutes (2010), as may be amended.

Permit. A permit issued by the City to operate a pain management clinic.

Permittee. A person in whose name a permit to operate a pain management clinic has been issued, as well as all individuals listed as an applicant on the application for a permit for a pain management clinic.

Person. An individual, partnership, corporation, association or legal entity. Any individual with any partial or whole ownership of any partnership, corporation, association or legal entity shall also be included in this definition.

Pharmacy. As defined the Section 47-35 of the Uniform Land Development Regulations.

ULDR. The Unified Land Development Regulations of the City of Fort Lauderdale.

Sec. 15-251. Permit required.

No Pain Management Clinic shall be permitted in the City of Fort Lauderdale until a permit has been issued by the City in accordance with this Article IX.

Sec. 15-252. Permit Application.

(a) Applicant shall be a person who seeks to operate a Pain Management Clinic and at least one of the applicants shall be the Medical Director of the Pain Management Clinic.

(b) Application for a permit to operate a Pain Management Clinic shall be made to the Building Department on a form provided by the building director. The application for a Pain Management Clinic permit shall, at a minimum, include the following information:

- (1) Florida Department of Health registration number.
- (2) The professional license numbers of the Medical Director including the Drug Enforcement Agency (DEA) number.

- (3) An accurate legal description of the property on which the Pain Management Clinic is located and street address, and unit number or letter, if any.
- (4) Indicate whether the Pain Management Clinic dispenses Controlled substance medication on the Pain Management Clinic location.
- (5) An affidavit by the Medical Director, attesting to the fact that a background check was performed, evaluated and acted upon to assure that no employees, full-time, part-time, contract, independent or volunteers have been convicted of or who have pled guilty or nolo contendere at any time to an offense constituting a felony in this state or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance within a five (5) year period prior to the date of the application.
- (6) A list of all persons associated with the medical and administrative management or operation of the Pain Management Clinic whether paid or unpaid, part time or full time, contract labor or independent contractor and shall include the following information:
- i. Name and title;
  - ii. Current home address, telephone numbers and date of birth;
  - iii. Current Florida driver's license or picture identification;
  - iv. All drug-related criminal convictions.
- This list shall be required to be updated within ten (10) days of any new person becoming associated with the pain management clinic.
- (7) A certified survey from a land surveyor registered in the State of Florida, indicating the distance in linear feet between the Pain Management Clinics and Pharmacies as measured from the nearest point of the property line of the Pain Management Clinic to the nearest point of the property line to the other Pain Management Clinic and Pharmacies in a straight line.
- (8) All information required for a Conditional use permit as provided in Section 47-24.3 of the ULDR.

(c) The application for a permit shall be notarized, typewritten, signed and sworn to by the Applicant(s) and shall include the post office and physical address of the Applicant(s) and the legal property owner(s). The application shall be signed by all Applicants. Additionally, the legal property owner(s) on which the Pain Management Clinic is located shall execute a form as provided by the Building Department acknowledging that the application has been read and agreed to by the legal property owner(s).

(d) A separate permit is required for each Pain Management Clinic location. The Applicant(s) shall be fully responsible for compliance with this Article IX and each Applicant shall be considered a Permittee upon the grant of a permit pursuant to this Article.

(e) Pain Management Clinic permits shall be renewed annually on or before the thirtieth (30<sup>th</sup>) day of September. A Pain Management Clinic shall update any change in ownership of the Pain Management Clinic or change in Medical Director of the Pain Management Clinic within ten (10) days to the Building Department. The Building Department shall review the submitted change information and determine if a new application should be completed based upon the information provided. Any change in location of a Pain Management Clinic shall require a new application be submitted and approved as provided in this Article Sec. 15-253.

Sec. 15-253. Review process.

The application for a permit shall be submitted to the Building Department to determine if the application is complete and in compliance with Article IX of the Code. The Building Department will forward the application to the Planning and Zoning Department for review to determine if the application is complete and in compliance with the ULDR. The Planning and Zoning Department shall process the application in accordance with the Conditional Use provisions and procedures of the ULDR. If the Pain Management Clinic is approved as a conditional use and the Building Department finds that the application complies with the provisions of this Article IX, a permit shall be issued to the Applicant(s). Existing Pain Management Clinics are not required to be approved as a conditional use.

Sec. 15-254. Standards and criteria for application review.

The following standards and criteria shall be used in reviewing the application.

- (1) A Pain Management Clinic shall only be permitted in zoning districts where pain management clinics are specified as a conditional use in the ULDR.
- (2) A Pain Management Clinic shall be fully owned by a physician or a group of physicians licensed under Chapter 458 or 459 of Florida Statutes, each of whom are Florida licensed physicians in good standing.
- (3) A Pain Management Clinic must be registered with the Florida Department of Health pursuant to Section 458.3265 or 459.0137, Florida Statutes, as may be amended.
- (4) Separation Requirements.
  - i. There shall be a one quarter (1/4) mile separation between each Pain Management Clinic as defined by this Article regardless of the municipal boundaries of the City of Fort Lauderdale.
  - ii. There shall be a one quarter (1/4) mile separation between a Pain Management Clinic and a Community Pharmacy or Special Pharmacy as defined by Chapter 47-35 of the ULDR regardless of the municipal boundaries of the City of Fort Lauderdale.
  - iii. No pain management clinic shall be located within five hundred (500) feet of any schools, churches, parks, libraries or daycare facilities.
- (5) The criteria and requirements for a conditional use for a Pain Clinic at the location proposed as applied in accordance with the ULDR.

Sec. 15-255. Operational standards.

- (1) A Pain Management Clinic shall not have employees, full-time, part-time, contract, independent or volunteers who have been convicted of or who have pled guilty or nolo contendere at any time to an offense constituting a felony in this state or in any other state involving the prescribing, dispensing, supplying, selling or possession of any controlled substance within a five (5) year period prior to the date of the application for a permit and that the Pain Management Clinic shall not employ any such persons thereafter.
- (2) A Pain Management Clinic is prohibited from having any outdoor seating areas, queues or customer waiting areas or permitting patients from waiting on the Pain Management Clinic property outside the Pain Management Clinic building. All activities of a Pain Management Clinic, including sale, display, preparation and storage shall be conducted entirely within a completely enclosed building.
- (3) A Pain Management Clinic is prohibited from having an on-site Pharmacy for Controlled Substance Medication.
- (4) Within thirty (30) days of the removal of a Pain Management Clinic from a building, site or parcel of land for any reason, the property owner shall be responsible for removing all signs, symbols or vehicles identifying the premises as a Pain Management Clinic. In the event of noncompliance with this provision the city may remove such signs at the expense of the property owner.
- (5) A Pain Management Clinic shall remain in compliance with all federal, state, county and municipal laws and ordinances as may be amended.
- (6) Pain Management Clinics may operate Monday through Saturday during the hours of 7:00 a.m. and 9:00 p.m. only.



Sec. 15-256. Inspection.

All Pain Management Clinics shall allow representatives of the City of Fort Lauderdale to enter and inspect their places of business during business hours or at any time the business is occupied for the purpose of an initial inspection to verify compliance with the permit requirements of this Article, Code of Ordinances and ULDR of the City of Fort Lauderdale, Florida Building Code and Florida Fire Prevention Code after Application is made and thereafter on an annual basis in conjunction with permit renewal.

Section 15-257. Fees.

The pain management clinic permit application fee shall be the same fee charged by the Building Department for permit review plus the same fee charged by the Planning and Zoning Department for a conditional use approval. Business Tax fees shall be pursuant to Chapter 15, Article II.

Sec. 15-258. Applicability of this Section to existing Pain Management Clinics.

- (1) All legally permitted uses now defined as Pain Management Clinics ("existing Pain Management Clinics") shall apply for and obtain a permit to operate and shall comply with the provisions of Section 15-251 and Section 15-252, subsections (a), (b)(1) through (6), (c), (d) and (e) of this Article IX within sixty (60) days following the adoption of this ordinance.
- (2) All existing Pain Management Clinics shall immediately comply with subsections (1), (2), (4), (5) and (6) of Section 15-255.
- (3) Sections 15-253, 15-254, subsections (2) and (3), 15-256 and 15-257 shall apply to all existing Pain Management Clinics upon receipt of permit application by the City.

Sec. 15-259. Revocation of permit.

- (a) Any adjudication of a violation of the Code of Ordinances and ULDR of the City of Fort Lauderdale shall provide for immediate revocation of the permit provided in this Article.
- (b) If the registration of a Pain Management Clinic is revoked or

suspended by the Florida Department of Health, the City shall immediately revoke the permit provided in this Article.

(c) The Medical Director of a Pain Management Clinic may appeal the revocation of the permit within ten (10) days of revocation to the City Manager.

Sec. 15-260. Penalties and Enforcement.

Any person who operates or causes to be operated a Pain Management Clinic in violation of any provision of this Article or operates or causes to be operated a publicly or privately owned clinic, facility or office which advertises for any type of pain management services; or employs a physician who is primarily engaged in the treatment of chronic nonmalignant pain by prescribing or dispensing controlled substance medications without meeting the requirements of this Article for a Pain Management Clinic shall be subject to the following penalties and/or remedies:

- (1) Penalties provided in section 1-6 of the Code of Ordinances of the City of Fort Lauderdale; and/or
- (2) Penalties provided in Chapter 11 of the Code of Ordinances; and/or
- (3) Revocation of the Permit for the Pain Management Clinic.

**SECTION 2.** That Section 47-6.12, List of permitted and conditional uses, General Business (B-2) District, of the Unified Land Development Regulations ("ULDR") of the City of Fort Lauderdale is hereby amended to read as follows:

47-6.12. List of permitted and conditional uses, General Business (B-2) District.

B. PERMITTED USE	C. CONDITIONAL USES
8. Retail Sales	
	a. <u>Pain Management Clinic</u>

**SECTION 3.** That Section 47-6.13, List of permitted and conditional uses, Heavy Commercial/Light Industrial (B-3) District, of the ULDR of the City of Fort Lauderdale is hereby amended to read as follows:

47-6.13. List of permitted and conditional uses, Heavy Commercial/Light Industrial (B-3) District.

B. PERMITTED USE	C. CONDITIONAL USES
8. Retail and Wholesale Sales	
	a. Pain Management Clinic

**SECTION 4.** That Section 47-35.1., Definitions, of the ULDR of the City of Fort Lauderdale is hereby amended to add a definition as follows:

Sec. 47-35.1. Definitions.

...

Pain Management Clinic. As defined in Section 15-250 of the Code.

Pharmacy. A retail establishment that includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy or a special pharmacy as defined by Florida Statutes Chapter 465, Section 465.003 as amended from time to time.

- (1) The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored or sold or where prescriptions are filled or dispensed on an outpatient basis.
- (2) The term "institutional pharmacy" includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility or other facility, hereinafter referred to as "health care institutions", where medicinal drugs are compounded, dispensed, stored or sold.

- (3) The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored or sold. The term "nuclear pharmacy" does not include hospitals licensed under Florida Statutes Chapter 395 or the nuclear medicine facilities of such hospitals.
- (4) The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored or sold if such locations are not otherwise defined in this subsection.

SECTION 5. That Section 47-18., Specific Use Requirements, of the ULDR of the City of Fort Lauderdale Is hereby amended to add a new use as follows:

Sec. 47-18. Specific Use Requirements.

...

Sec.47-18.40. Pain Management Clinic.

A. Definition and requirements. For the purposes of this section a Pain Management Clinic shall be defined and shall meet the requirements provided in Article IX, Pain Management Clinics of Chapter 15, Business Tax Receipts and Miscellaneous Business Regulations of the Code, and the parking requirements provided in Chapter 47 of the ULDR. In addition each Pain Management Clinic shall have the following:

- 1. a waiting area at least 150 gross square feet in area; and
- 2. one examination room at least 100 gross square feet in area.

SECTION 6. That Section 47-20, Parking and Loading Requirements, of the ULDR of the City of Fort Lauderdale is hereby amended to read as follows:

Sec. 47-20.2, Parking and loading zone requirements.

TABLE 1. Parking and Loading Zone Requirements

Use	Standard Requirements	
	Parking Space Requirement	Loading Zone Requirement
<u>Pain Management Clinic</u>	<u>1/10 sf gfa of waiting area.</u> <u>1/100 sf of examination room</u> <u>1/150 sf gfa of remainder</u>	<u>See Table 2</u>

SECTION 7. That the ULDR is hereby amended by replacing the words drug store where it is provided in the ULDR and replacing it with the word Pharmacy.


SECTION 8. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 9. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.


SECTION 10. Codification of this ordinance in the City Code of Ordinances is hereby authorized and directed.

SECTION 11. That this Ordinance shall be in full force and effect on July 1, 2011 and shall apply to all new and existing medical offices, business offices, or professional offices.

PASSED FIRST READING this the 7th day of June, 2011.  
PASSED SECOND READING this the 21st day of June, 2011.

  
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Mayor  
JOHN P. "JACK" SEILER

ATTEST:

  
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City Clerk  
JONDA K. JOSEPH