

ORDINANCE NO.: 2012- 7

AN ORDINANCE AMENDING CHAPTER 21, (OFFENSES AND MISCELLANEOUS PROVISIONS), ARTICLE XIV, (PAIN MANAGEMENT CLINIC ORDINANCE), AMENDING AND RECODIFYING SECTIONS 21-231 thru SECTION 21-244, AS CHAPTER ARTICLE II, SECTIONS 18-16 THRU 18-32, AMENDING TRANSFERRING AND ADDING NEW PROVISIONS TO HERNANDO COUNTY CODE, APPENDIX A, (ZONING), ARTICLE (ADMINISTRATION), SECTIONS 2 AND 10; PROVIDING FOR VERIFICATION OF FEDERAL, STATE, AND LOCAL PERMITS FOR COMPLIANCE, PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS CLAUSE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR INCLUSION/CODIFICATION IN THE CODE AND EFFECTIVE DATE.

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FILED

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY:

SECTION I: Amendment and Revision to Hernando County Code Chapter 21, [Offenses and Miscellaneous Provisions] Article XIV, Pain Management Clinic Ordinance.

Hernando County Code, Chapter 21, [Offenses and Miscellaneous Provisions], Article XIV (Pain Management Clinic Ordinance) is amended to remove, modify, and transfer its provisions, including moratorium provisions of Section 21-235, to other sections of the Code:

ARTICLE XIV. PAIN MANAGEMENT CLINIC ORDINANCE

- Sec. 21-231. Title.
- Sec. 21-232. Legislative findings and authority.
- Sec. 21-233. Purpose and intent.
- Sec. 21-234. Definitions.
- Sec. 21-235. Certificate of use required; temporary moratorium on new pain management clinics and expansion of existing pain management clinics.
- Sec. 21-236. Certificate of use application process and requirements.
- Sec. 21-237. Grounds for certificate of use denial, nonrenewal or revocation.
- Sec. 21-238. Additional certificate of use compliance requirements.
- Sec. 21-239. Review of certificate of use denial, nonrenewal or revocation.
- Sec. 21-240. Certificate of use renewals; fees.
- Sec. 21-241. Service of notice.
- Sec. 21-242. Violations and inspections.
- Sec. 21-243. Enforcement and penalties.
- Sec. 21-244. Allocation of fines, penalties and forfeitures.

Sec. 21-231. Title.

This article shall be known and may be cited as the "Pain Management Clinic Ordinance."

Sec. 21-232. Legislative findings and authority.

The recitals set forth above are incorporated herein. The Hernando County Board of County Commissioners finds and declares there exists an urgent need to enact an ordinance regulating certain pain management clinics within unincorporated Hernando County.

This article is enacted pursuant to chapter 125, Florida Statutes, and the home rule powers of county government and is determined by the board to be in the best interest of the health, safety and general welfare of the people of Hernando County.

The board further finds that in order for county staff to examine and make recommendations to the board as to the criteria to be considered for the establishment or expansion of pain management clinics, it is necessary to place a moratorium on the submission of applications for establishment of new pain management clinics and the expansion of pain management clinics beginning immediately upon this article taking effect.

Sec. 21-233. Purpose and intent.

The purpose and intent of this article is to promote the health, safety and general welfare of the residents of Hernando County through the regulation of certain pain management clinics (as defined below) operating in the county as of the effective date of this article and to impose a temporary moratorium on new pain management clinics and the expansion of existing pain management clinics in order for the county to analyze the impacts from current pain management clinics, to analyze the effectiveness of existing and emerging regulatory efforts in Florida, and to examine and develop additional criteria for the siting of pain management clinic uses within unincorporated Hernando County.

Sec. 21-234. 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:]

Applicant means the owner or a person(s) authorized by the owner to complete an application for a certificate of use to operate a pain management clinic.

Article shall mean chapter 21, article XIV, of the Hernando County Code of Ordinances.

Board shall mean the Board of County Commissioners for Hernando County, Florida.

Certificate of use shall mean a certificate issued pursuant to this article by the department, on an annual basis, authorizing the operation of a specific pain management clinic location in Hernando County and which contains the state's required registration number on its face and which authorizes the occupancy of a structure or premises and is required prior to occupancy, change of use and under other specific condition. Each certificate of use shall, at a minimum, identify on its face, the clinic's name and physical address, the responsible physician's name, the clinic owner's name and address and the property

owner's name and address. Each certificate of use shall have a unique number identification on its face.

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.

Controlled substance means any substance or chemical listed in Schedule I, Schedule II, Schedule III, Schedule N, or Schedule V of section 893.03, Florida Statutes, as this section may be amended or renumbered from time to time, or listed as a "controlled substance" in any other state, or listed as a "controlled substance" in the United States Code (USC).

County or Hernando County shall mean all unincorporated areas of Hernando County, Florida.

Department shall mean that department, division or section within Hernando County government charged with overseeing and regulating zoning and use activities within the unincorporated area of Hernando County, Florida.

Designated physician shall mean that physician with an active license to practice medicine in Florida, and who has been designated to practice at the clinic location for which the physician has assumed responsibility, and is not otherwise in violation of any provision of this article.

Operating or to operate a pain management clinic means to conduct the affairs of or manage the operations of a "pain management clinic" (as defined below) including, but not limited to, any one (1) or more of the following activities:

- (1) Scheduling or accepting appointment(s) solely for initial pain management services or to obtain prescription drugs for pain management, including controlled substances listed in Schedule I, Schedule II, Schedule III, Schedule N, or Schedule V of section 893.03, Florida Statutes, or any other state, or the United States; or
- (2) Prescribing, dispensing or administering any controlled substances listed in paragraph (1), above; or
- (3) Accepting cash payments for pain management services or controlled substances listed in paragraph (1), above; or
- (4) Advertising in any medium including road or other signage as a pain management or pain control clinic or business or words of similar import; or
- (5) Evaluating patients for pain management drug treatment without the equipment necessary or without having copies in the medical record of diagnostic testing such as x-rays, scans, or other tests to substantiate with a reasonable degree of certainty the need for prescription pain medication; or
- (6) Leasing or owning property for use as or in connection with a pain management clinic or business; or
- (7) Employing or contracting with any person for compensation to work in connection with the provision of medical services at a pain management clinic.

Pain management clinic shall have the same meaning as set forth in section 458.3265(1)(a), Florida Statutes, as such section may be amended or renumbered from time to time.

Sheriff shall mean the Hernando County Sheriff, a constitutional officer.

Sheriff's office shall mean the Hernando County Sheriff's Office.

~~Sec. 21-235. Certificate of use required; temporary moratorium on new pain management clinics and expansion of existing pain management clinics.~~

~~(a) No pain management clinic, as defined in this article, may operate in unincorporated Hernando County, nor may any person operate a pain management clinic in unincorporated Hernando County without first obtaining a pain management clinic certificate of use issued by the department pursuant to this article; except any pain management clinic, operating in Hernando County as of the effective date of this article, who has filed a complete application and paid all requisite fees within ninety (90) days from the effective date of this article may continue operating until the department renders a decision to either grant or deny the certificate of use and notifies the applicant of its decision. The clinic must obtain its certificate of use, if approved, from the department within ten (10) business days of notification by the department. Certificates of use shall be granted only for clinics that have satisfied all requirements of this article including the payment of the applicable application and certificate of use fees.~~

~~(b) Each pain management clinic shall stand alone and shall require its own certificate of use.~~

~~(c) In order to allow the department time to process the applications of all pain management clinics operating in unincorporated Hernando County as of the effective date of this article and to allow staff time to examine and develop criteria regarding the future siting of pain management clinics, no new pain management clinics may open or operate in Hernando County or make application for a pain management clinic, and no existing pain management clinic may expand for the shorter of (i) twelve (12) months from the effective date of this article or (ii) the enactment of a new ordinance by the board. For purposes of this provision, "new" shall mean not previously operating as a pain management clinic within unincorporated Hernando County (at the same location where the certificate of use is sought) as of the effective date of this article.~~

~~(d) Beginning on the effective date of this article, the board hereby imposes a moratorium on the issuance of certificates of use, zoning approvals, (including building permits) and development approvals of any kind for the establishment, location or expansion of pain management clinics on any property located in unincorporated Hernando County for the shorter of (i) twelve (12) months from the effective date of this article or (ii) the enactment of a new ordinance by the board. However, this moratorium shall not apply to the issuance of a certificate of use for a pain management clinic in existence as of the effective date of this article and which has timely submitted a complete and unexpired application in accordance with subsection (a) above.~~

~~Sec. 21-236. Certificate of use application process and requirements.~~

~~(a) *Application required.* Any person seeking to operate a pain management clinic (as defined in this article) within unincorporated Hernando County shall complete an application as provided by the department. If any person seeks to operate more than one (1) pain management clinic, a separate application for each clinic shall be required. As part of the application, the applicant shall provide all of the following information:~~

~~(1) Business name of the clinic, address of the clinic, square footage of the building housing the clinic, date first opened (or anticipated date of opening for new clinics), and a description of all existing uses which abut or adjoin the subject site.~~

- (2) Detailed description of the services and products to be provided, equipment to be used, and a professionally drawn floor plan to scale with all rooms identified.
- (3) Detailed description of all existing and proposed improvements to the subject site.
- (4) A site plan which also shows the total number of parking spaces on the property.
- (5) The registration number from the state department of health as required by chapter 458 or 459, Florida Statutes (if the clinic must be registered under state law).
- (6) Proof, satisfactory to the department, that the applicant has legal ownership or control of the property that is or is being proposed as a pain management clinic (examples include a copy of the deed if the property is owned by the applicant, a copy of the lease or license agreement if the property is not owned by the applicant).
- (7) Proof that the clinic for which the certificate of use is sought was operating within Hernando County (at the same location) as of the effective date of this article. Acceptable forms of proof shall be utility bills, rent receipts, tax returns, or such similar documents as the department may request.
- (8) Designation of the physician who shall be responsible for complying with all requirements related to registration and operation of the clinic and the physician's DEA number. The designated physician must have a full, active, and unencumbered license to practice medicine in Florida, and shall practice at the clinic location for which the physician has assumed responsibility. Within ten (10) days after termination or absence of a designated physician, the clinic must notify the department of the identify of another designated physician for the clinic or forfeit the clinic's certificate of use.
- (9) A list of all persons, including the designated physician, associated with the management and/or operation of the clinic, whether paid or unpaid, part time or full time, including all contract labor and independent contractors. This list shall include, but is not limited, to all owners, operators, physicians, employees and volunteers. For each and every person listed, the following additional information shall be provided:
 - a. The person's full name;
 - b. The person's title or position with the clinic (e.g. owner, operator, manager, employee, volunteer etc.);
 - c. The person's current home address, telephone number and date of birth;
 - d. A copy of the person's current Florida driver's license or a government issued photo ID;
 - e. State whether the person has any financial or business interest in a pharmacy, as defined under chapter 465, Florida Statutes; and
 - f. A criminal history form or other similar document completed by the sheriff or such persons designated by the sheriff and which indicates whether said person has any criminal conviction(s) including all misdemeanor and felonies and, if so, a listing of said conviction(s). If there are no known criminal convictions, the form shall state same. The sheriff may charge a fee for each criminal background check performed and the applicant shall be responsible for paying said fees. No criminal history form or similar document may be accepted if dated earlier than sixty (60) days from the date filed with the department.
- (10) If during the department's review of the certificate of use applicant, there is a deletion, substitution or addition of any person listed pursuant to subsection (9) above, the department shall be immediately advised of such change(s) and shall be furnished all

of the information required above, including a new criminal history form for each new person that has been substituted or added.

(11) State whether the pain management clinic prescribes, or intends to prescribe, any controlled substance at the pain management clinic site.

(12) State whether the pain management clinic dispenses, or intends to dispense, controlled substances at the pain management clinic site.

(13) State whether the pain management clinic distributes, or intends to distribute controlled substances at the pain management clinic site.

(14) Such information designated by the county zoning supervisor/administrative official as necessary in order for county staff to make a reasonable determination whether to grant or deny the requested certificate of use.

(15) A sworn and notarized statement from both the designated physician and the clinic owner attesting to the veracity and accuracy of the information provided in the application. The notarized statement shall further attest to all of the following:

a. That the practice of the designated physician is, or will be, at the location stated in the pain medical clinic certificate of use application; and

b. That no employees of the facility have been convicted of a drug-related crime within the five-year period to the date of application and that the pain management clinic will not knowingly employ any such convicted felons thereafter.

(16) In the event that any above required information change during the department's review, but prior to any decision to grant or deny being made, it shall be the responsibility of the applicant to advise the department of such change(s) within ten (10) calendar days of the change.

(b) Completeness of application. It is the applicant's sole responsibility to provide accurate contact information when submitting the application to the department. If the application for a pain management clinic certificate of use is not properly completed, in the sole discretion of the department, the department shall notify the designated contact person listed in the application. A completed application must be received by the department within twenty (20) calendar days of receipt of the deficiency notice from the department in order to avoid assessment of another application fee. Failure to timely respond within the twenty (20) days shall result in a denial of the application as incomplete. A new application must then be submitted that is accompanied by the full nonrefundable application fee, in order to request a certificate of use.

(c) Inspections. Any person authorized to enforce this article, including, but not limited to, law enforcement officers employed by or under the sheriff, may perform spot or random inspection(s) of the facility as necessary to determine whether or not the application submitted is accurate in all respects, to verify a physician licensed under chapter 458 or 459, Florida Statutes, is on the premises during all times medications are dispensed or prescribed, and/or whether the terms of this article are being adhered to.

(d) Initial application fee. Each application for a pain management clinic certificate of use shall be accompanied by a nonrefundable application fee in the amount of one thousand five hundred dollars (\$1,500.00). The application fee for a pain management clinic certificate of use is in addition to the one thousand five hundred dollar annual certificate of use fee/certificate of use renewal fee. Any changes to the application fee or certificate of use fee authorized by this article may be accomplished by resolution of the board without the need to revise this article.

~~(e) Annual certificate of use fee. An applicant, upon approval of its application for a pain management clinic certificate of use in accordance with this article, shall pay a one-thousand-five hundred dollar annual certificate of use fee to the department. The receipt of the annual certificate of use fee is a prerequisite to the department issuing the certificate of use. The certificate of use fee is in addition to, and not in lieu of, the certificate of use application fee of one thousand five hundred dollars (\$1,500.00) required pursuant to subsection (d) above.~~

~~(f) Change of information following the issuance of certificate of use; fees. Should any information or conditions change from that stated in the initial certificate of use information, the applicant shall provide that information to the department within ten (10) calendar days of such change:~~

~~(1) Change of the owner or operator of the pain management clinic shall require a new initial application and payment of a new application fee.~~

~~(2) Change of the primary physician shall require providing all of the information required in subsection (a) above in connection with the new physician and paying the department a five hundred dollar certificate of use modification and processing fee. A current criminal history form shall be provided on the substituting physician (which the sheriff's office may charge a separate fee for).~~

~~(3) Substitution or addition of any person required to be listed in the above subsection (other than the operator or primary physician) shall require providing all information set forth in the above subsections to the department and paying the department a one-hundred dollar processing fee for each person. A current criminal history form shall be provided on all new persons (which the sheriff's office may charge a separate fee for).~~

~~(g) Public record. Any information contained in any application under this article is subject to the public records law, chapter 119, Florida Statutes, unless specifically exempted by state law.~~

~~Sec. 21-237. Grounds for certificate of use denial, nonrenewal or revocation.~~

~~The county shall deny, not renew, or revoke a pain management clinic certificate of use upon the occurrence of one (1) or more of the following:~~

~~(1) An application contains false or missing information or is materially misleading on its face;~~

~~(2) The clinic is not registered with the state in accordance with chapter 458 or 459, Florida Statutes, if state registration is otherwise required;~~

~~(3) The clinic has had its registration suspended or revoked by the state;~~

~~(4) Failure to allow for inspection of the clinic by any law enforcement officer employed by or under the sheriff's office, any county code enforcement officer, or any other person authorized to enforce article violations in Hernando County at any time the clinic is open or occupied;~~

~~(5) Failure to abide by any provision of this article;~~

~~(6) Allowing any person to work or volunteer at the clinic, whether paid or unpaid, who has been convicted of or plead guilty or nolo contendere to (even if sealed or expunged) any criminal offense, misdemeanor or felony, involving or relating to the prescribing, dispensing, distributing, supplying or selling of any controlled substance; or~~

~~(7) The facility is owned or operated by any person or has any contractual or employment relationship with a physician or other permitted health care practitioner as defined under chapter 456, Florida Statutes;~~

~~a. Whose Drug Enforcement Administration (DEA) number has ever been suspended or revoked;~~

~~b. Whose application for a license to prescribe, dispense, distribute, or administer a controlled substance has been denied, suspended or revoked by any jurisdiction;~~

~~c. Who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) any criminal offense, misdemeanor or felony, involving or relating to the prescribing, dispensing, distributing, supplying or selling of any controlled substance law;~~
~~or~~

~~d. Whose license has been suspended or revoked or has had other licensure action taken as a result of physician's abuse of drugs or alcohol, or from the improper prescribing, dispensing or distributing of any controlled substance.~~

~~(8) If the payment for the application fee or the certificate of use fee is invalid or uncollectible for any reason.~~

~~(9) If, after any pain management certificate of use is issued, a change in any of the information relative to the initial application occurs and such change, upon review and determination of the department, is determined to be grounds for the denial or revocation of the certificate of use.~~

~~(10) Failure to notify the department of any change of information following the issuance of any certificate of use as required by section 21-236~~

~~Sec. 21-238. — Additional certificate of use compliance requirements.~~

~~(a) A valid Hernando County Pain Management Clinic Certificate of Use issued pursuant to this article must be prominently displayed in a common public area of the pain management clinic.~~

~~(b) A pain management clinic certificate of use is nontransferable and cannot be assigned. Whenever ownership or management of a pain management clinic changes, a new application must be filed for a new certificate of use and a new nonrefundable application fee shall be paid (and, if approved, a new certificate of use fee shall be paid).~~

~~(c) Any law enforcement officer employed by or under the sheriff, any county code enforcement officer, or any other persons authorized to enforce county ordinances shall be allowed access for inspections of the clinic premises at any time the clinic is open or occupied.~~

~~(d) The designated physician shall practice full time at the clinic location for which the physician has assumed responsibility.~~

~~(e) The designated physician shall secure all prescription pads so that only authorized persons may access them. Following the effective date of this article, every written prescription must include the clinic's name, address and Hernando County's Certificate of Use number.~~

~~(f) The pain management clinic shall not limit the form of payment for services, prescriptions or drugs to cash only.~~

(g) The pain management clinic shall be precluded from having any outdoor seating areas, queues, or customer waiting areas. All activities of the pain management clinic, including all patient contact, examination, prescribing, dispensing, sale, display, and storage without limitation, shall be conducted entirely within a completely enclosed building. Mobile or temporary facilities (including mobile vans, motor homes, buses, trailers or movable structures, without limitation) are prohibited.

(h) No pain management clinic may locate in any area not properly zoned and designated for use a health clinic or such other zoning designation allowed under the county zoning ordinance.

(i) The pain management clinic shall meet and satisfy all applicable land development regulations and applicable county codes and regulations.

(j) 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.

Sec. 21-239. – Review of certificate of use denial, nonrenewal or revocation:

(a) The county shall provide written notice of a denial of any new or renewal certificate of use specifying in writing the grounds for the denial. The applicant whose application has been denied (except for an incomplete application) may request a formal review of the denial before the county's designated special master or hearing officer if the denial was erroneous. The applicant must send a written request for review indicating the specific alleged error or errors made by the county along with any and all facts that support the applicant's position the certificate of use was erroneously denied. The request must be received by the department within ten (10) business days of the date of the denial notice. The review shall be performed by the county's designated special master or hearing officer. The special master or hearing officer shall review the applicant's request and all supporting documents to determine if sufficient cause exists to grant a hearing on the request. In the event applicant's request and supporting documents do not state a prima facie case error has occurred, the special master or hearing officer may summarily dismiss the request and notify applicant in writing of the dismissal. Whenever, in the opinion of the special master or hearing officer, an applicant's request and supporting documentation establishes a prima facie case of error, a hearing will be set and conducted for the special master or hearing officer to rule upon the matter. The decision of the special master or hearing officer shall be final unless appealed to Circuit Court, in and for Hernando County, within thirty (30) days of said decision. Any decision of the special master or hearing not timely appealed shall be deemed final.

(b) Any clinic whose certificate of use is denied, nonrenewed (except for an incomplete certificate of use application), or revoked, shall not be eligible to reapply for five (5) years unless the denial, nonrenewal or revocation is overturned on appeal. In addition, the owner(s) and the physician(s) listed on the application, regardless of the clinic's name, may not be an applicant for a certificate of use renewal at another clinic for a period of five (5) years, unless the individual was previously the applicant for that clinic, or unless the denial or nonrenewal is based solely on an incomplete application.

(c) If there are any costs associated with the noticing and conducting of the hearing, the applicant shall be required to pay all such costs.

Sec. 21-240. – Certificate of use renewals; fees:

~~Certificates of use required for pain management clinics shall be valid for only one (1) year. Provided the pain management clinic requesting renewal is in full compliance with this article and no material information contained in its initial application has changed, a renewal certificate of use shall be issued by the department, after the applicant pays an annual certificate of use renewal fee of one thousand five hundred dollars (\$1,500.00) to the department. Renewals shall only be issued to clinics that were previously issued a certificate of use by the department and who timely filed a renewal application. A pain management clinic that fails to timely request renewal shall be required to file a new application and pay a new nonrefundable application fee.~~

~~Sec. 21-241. Service of notice.~~

~~Any notice required by this article shall be in writing and sent by certified mail or hand delivery to the mailing address set forth on the application for the pain management clinic certificate of use. The mailing address set forth in the application shall be considered the correct mailing address.~~

~~Sec. 21-242. Violations and inspections.~~

~~It shall be unlawful for any person to violate any provision of this article or to operate a pain management clinic without a valid county issued pain management clinic certificate of use. It shall be a violation for the property owner where the clinic is situated to allow any pain management clinic to open or operate without a valid pain management clinic certificate of use issued pursuant to this article.~~

~~Any law enforcement officer employed by the sheriff's office, any code enforcement officer, or any other persons authorized to enforce county ordinances may enter the clinic premises and conduct an inspection to determine compliance with this article at any time the clinic is open or occupied.~~

~~Sec. 21-243. Enforcement and penalties.~~

~~(a) Revoking of the county pain management clinic certificate of use.~~

~~(b) Pursuant to section 125.69, Florida Statutes, any person or persons, firm or corporation, or any agent thereof who violates any provision of this section shall be subject to prosecution in the name of the state in the same manner as misdemeanors are prosecuted; and, upon conviction such person shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense.~~

~~(c) Any person or persons, firm or corporation, or any agent thereof who violates any provision of this article may be prosecuted in the manner provided for in chapter 2, article III, of the Hernando County Code of Ordinances.~~

~~(d) The remedies and penalties herein are not intended to be cumulative and the sheriff's office and/or the county may institute any appropriate action or proceedings to prevent, restrain, enjoin, correct or abate a violation of this article as allowed by law.~~

~~(e) Any combination of the foregoing.~~

~~Sec. 21-244. - Allocation of fines, penalties and forfeitures.~~

~~For all enforcement actions initiated by the sheriff and prosecuted by or in the name of the sheriff or the State of Florida, all fines, penalties and forfeitures assessed by the court or recovered shall be retained by the sheriff except as otherwise required to be shared with, or turned over to, the State of Florida. For all enforcement actions initiated and prosecuted by or in the name of the county, all fines, penalties and forfeitures assessed by the court or recovered shall be retained by the county except as otherwise required to be shared with, or turned over to, the State of Florida.~~

SECTION II: Amendment and Addition to Hernando County Code Chapter 18, [Licenses, Permits, and Miscellaneous Business Regulations] Article II, Pain Management Clinic Registration.

Hernando County Code, Chapter 18, [Licenses, Permits, and Miscellaneous Business Regulations], Article II (Pain Management Clinic Registration) is hereby added, in effect transferring, and modifying the former provisions of Chapter 21-231 thru 21-244 to this Chapter:

ARTICLE II. - PAIN MANAGEMENT CLINIC REGISTRATION

Sec. 18-16. - Title.

Sec. 18-17. - Legislative findings and authority.

Sec. 18-18. - Purpose and intent.

Sec. 18-19. - Definitions.

Sec. 18-20. - Prohibited operation; Registration required.

Sec. 18-21. - Application time periods for New and Renewal Registration Certificates.

Sec. 18-22. - Registration application requirements and process.

Sec. 18-23. - Approval Criteria, Grounds for denial, non-renewal or revocation.

Sec. 18-24 - Appeal Procedures for Certificate Denial, Non-Renewal or Revocation.

Sec. 18-25. - Registration Certificate Continuing Compliance Requirements.

Sec. 18-26. - Revocation Criteria and Procedures

Sec. 18-27. - Registration fees, renewal fees and charges.

Sec. 18-28. - Service of notice.

Sec. 18-29. - Inspections.

Sec. 18-30 - Violations.

Sec. 18-31. - Criminal and Civil Penalties, Code Enforcement, Revocation.

Sec. 18-32. - Allocation of fines, penalties and forfeitures.

Sec. 18-16. Title.

This Ordinance shall be known and may be cited as the "Pain Management Clinic Registration Ordinance."

Sec. 18-17. Legislative Findings and Authority.

The Recitals set forth above, together with the Recitals, Legislative Findings, and Purpose and Intent set forth in Ordinance 2011-9 adopted on June 14, 2011 are incorporated herein by this reference

Sec. 18-18. Purpose and Intent.

The purpose and intent of this Article is to promote the health, safety and general welfare of the residents of Hernando County through the regulation of Pain Management Clinics operating in the County by requiring annual registration of such Pain Management Clinics in accordance with this Article. Issuance of Certificate of Use [Hernando County Code, Appendix A (Zoning), Article V, Section 2] is conditioned upon proof of registration under this Article.

Sec. 18-19. - 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:]

Applicant means the owner or a person(s) authorized by the owner to complete an application for a certificate of use to operate a Pain Management Clinic.

Application Window means September 1 to October 31, of the year prior to the year Pain Management Clinic operations are sought, unless other timeframes are provided in this Ordinance.

Article shall mean Chapter 18, Article II, of the Hernando County Code of Ordinances.

Board shall mean the Board of County Commissioners for Hernando County, Florida.

Certificate of use shall mean a certificate issued pursuant to Hernando County Code, Appendix A (Zoning), Article V, Section 2, upon demonstration to the Zoning Administrator of compliance with the criteria and standards for approval, including but not limited to Zoning compliance and affirmation of compliance with Federal, State and Local Permits, approvals, such as, in the case of Pain Management Clinic use, proof of Pain Management Clinic Registration under this Article.

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.

Controlled substance means any substance or chemical listed in Schedule I, Schedule II, Schedule III, Schedule N, or Schedule V of section 893.03, Florida Statutes, as this section may be amended or renumbered from time to time, or listed as a "controlled substance" in any other state, or listed as a "controlled substance" in the United States Code (USC).

County or Hernando County shall mean all unincorporated areas of Hernando County, Florida.

Department shall mean that Department, division or section within Hernando County government charged with overseeing licensing and business regulation or charged with

overseeing and regulating zoning and use activities, or such Department assigned by the County Administrator to perform the duties and responsibilities of this Article.

Designated Physician shall mean that physician with an active license to practice medicine in Florida, and who has been designated to practice at the clinic location for which the physician has assumed responsibility, and is not otherwise in violation of any provision of this article.

Hearing Officer for purposes of this ordinance shall mean an attorney licensed to practice law in the State of Florida with no less than five years of local or state government experience. The Hearing Officer shall be agreed to by the County Attorney and the appellant. The attorney shall conduct the hearing and make a final decision which shall be the final decision of the County. If the parties cannot agree to an attorney to conduct the hearing within ten (10) working days from the filing of the appeal, the appeal shall be transmitted to the Florida Division of Administrative Hearings, (DOAH), for the conduct of the hearing. The appeal timeframes for processing an appeal by the County are suspended until the appointment of a DOAH Officer.

Operating or to operate a Pain Management Clinic means to conduct the affairs of or manage the operations of a "Pain Management Clinic" (as defined below) including, but not limited to, any one (1) or more of the following activities:

- (1) Scheduling or accepting appointment(s) solely for initial pain management services or to obtain prescription drugs for pain management, including controlled substances listed in Schedule I, Schedule II, Schedule III, Schedule N, or Schedule V of section 893.03, Florida Statutes, or any other state, or the United States; or
- (2) Prescribing, dispensing or administering any controlled substances listed in paragraph (1), above; or
- (3) Accepting cash payments for pain management services or controlled substances listed in paragraph (1), above; or
- (4) Advertising in any medium including road or other signage as a pain management or pain control clinic or business or words of similar import; or
- (5) Evaluating patients for pain management drug treatment without the equipment necessary or without having copies in the medical record of diagnostic testing such as x-rays, scans, or other tests to substantiate with a reasonable degree of certainty the need for prescription pain medication; or
- (6) Leasing or owning property for use as or in connection with a Pain Management Clinic or business; or
- (7) Employing or contracting with any person for compensation to work in connection with the provision of medical services at a Pain Management Clinic.

Pain Management Clinic shall have the same meaning as set forth in section 458.3265(1)(a), Florida Statutes, as such section may be amended or renumbered from time to time. At the time of this enactment the State of Florida defines "Pain-management clinic" as any publicly or privately owned facility: (I) That advertises in any medium for any type of pain-management services; or (II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

Pain Management Clinic Registration means the annual process for registration of Pain Management Clinics set forth in this Article.

Pain Management Clinic Registration Certificate means the certificate evidencing successful registration, issued on an annual basis, which authorizes Pain Management Clinic establishment and/or operation in Hernando County. A Certificate relates to a specific clinic location; A Registration Certificate under this Article shall be obtained prior to a Zoning Department Certificate of Use approval which must be obtained prior to occupancy or in the event of a change of use, or when any construction is conducted at a specific location pursuant to Hernando County Code, Appendix A (Zoning), Article V, Section 2. A Registration Certificate shall, at a minimum, identify on its face, the clinic's name and approved physical address, the Designated Physician's name, the clinic owner's name and address and the property owner's name and address. A County-issued Registration Certificate shall also reference the State of Florida's required registration number on its face and each certificate shall have a unique County identification number on its face.

Sheriff shall mean the Hernando County Sheriff, a constitutional officer.

Sheriff's Office shall mean the Hernando County Sheriff's Office.

Sec. 18-20. - Prohibited operation; Registration required.

(a) Except as provided in Section 18-20(b) and Section 18-21 below, no Pain Management Clinic, as defined in this Article, may be established, opened, or operated in unincorporated Hernando County, nor may any person operate or cause to be operated a Pain Management Clinic in unincorporated Hernando County without first obtaining a Pain Management Clinic Registration Certificate issued by the Department pursuant to this Article.

(b) Any Pain Management Clinic, operating in Hernando County as of June 14, 2011, which obtained a one-year certificate approval pursuant to Ordinance 2011-9, or which tendered an appeal of the Zoning Administrator's action pursuant to Ordinance 2011-9, may continue operating until September 30, 2012 or until the appeal, if any, is resolved against the applicant, whichever occurs first. The expiration date of all certificates issued under Ordinance 2011-9 is extended to September 30, 2012.

Sec. 18-21. - Application time periods for New and Renewal Registration Certificates;

(a) Any Pain Management Clinic that submits a complete Renewal or New Application for a Registration Certificate as provided in this Article and receives approval from the Department after application of the applicable criteria and standards, may establish and operate a Pain Management Clinic.

(b) Any Renewal Pain Management Clinic which submits during the designated Application Window and receives a denial and timely processes an appeal of the Department's denial in strict observance of the requirements of this Article, may temporarily operate the Pain Management Clinic, but only until the due process appeal is resolved, and in no case shall the due process appeal be resolved more than ninety (90) days after the appeal is filed. Resolution of the appeal against the applicant terminates temporary authorization; resolution of the appeal for the applicant results in approval for the balance of the Registration Certificate year. A New Application does not have temporary authorization to establish and conduct operations in the event of a denial.

(c) A Pain Management Clinic operating in Hernando County as of June 14, 2011, shall submit to the Department an application for a Renewal Registration Certificate under this Article for the period beginning October 1, 2012 and ending December 31, 2013. Renewal applications will be accepted beginning June 15, 2012 and will be accepted at the Department only until July 31, 2012 at 5:00 p.m. Existing Clinics may also apply for expansion and relocation during this window, even if the expansion or relocation will occur prior to the end of the current certificate year, (i.e. September 30, 2012). Failure to submit a complete Renewal Application in the Application Window provided above is a jurisdictional defect and any Pain Management Clinic operation failing to submit a timely application will require a New Application to be processed in accordance with this Article and continued operations will be unlawful after September 30, 2012. The Department shall notify all existing Pain Management Clinics of the timelines in this Ordinance on or about June 1, 2012.

(d) Any New Pain Management Clinic, (not previously operating in Hernando County, and not previously permitted or processed under Ordinance 2011-9), shall submit to the Department an application for a New Registration Certificate under this Article for the calendar year 2013. Applications will be accepted from New Pain Management Clinics beginning September 1, 2012 and ending October 15, 2012 for operations beginning no earlier than January 1, 2013. Applications for New Pain Management Clinics may also be accepted at any time, but the Certificate will only be valid for the calendar year in which it is issued, unless the application occurs in the Application Window.

(e) For subsequent calendar years (i.e. beginning with calendar year 2014), Renewal Applications will be accepted by the Department beginning on September 1 of the prior year and ending October 15 of the prior year. Failure to submit a complete Renewal Application in the Application Window provided above is a jurisdictional defect and will require a New Application in accordance with this Article. New Applications will be accepted at any time, but failure to observe the Application Window may delay operations.

Sec. 18-22. - Registration application requirements and process.

(a) Initiation of Application process. Any person seeking to operate a Pain Management Clinic within unincorporated Hernando County shall complete an Registration Certificate Application as provided by the Department. The mandatory application materials are specified below in paragraph (b) of this Section. An applicant may submit additional materials which the applicant believes are relevant and material to the criteria for approval. An application is granted or denied based upon the facts and evidence submitted as part of the record. An applicant may elect in writing to refuse to submit specified information after a completeness deficiency determination, (See 18-22(c) below), and have the application reviewed against the criteria without the requested information. If any person seeks to operate more than one (1) Pain Management Clinic, a separate application for each clinic shall be required.

(b) Application materials. As part of the application, the applicant shall provide all of the following information:

(1) Business name of the clinic, address of the clinic, square footage of the building housing the clinic, opening date, and a description of all existing uses which abut or adjoin the subject site.

(2) Detailed description of the services and products to be provided, equipment to be used, and a professionally drawn floor plan to scale with all rooms identified.

(3) Detailed description of all existing and proposed improvements to the subject site.

(4) A site plan which also shows the total number of parking spaces on the property.

(5) Evidence of Registration with the State of Florida Department of Health pursuant to Florida Statutes 458.3265 or other applicable statute, including the State of Florida Registration Number from the Department of Health as required by chapter 458 or 459, Florida Statutes (if the clinic must be registered under state law).

(6) Proof the applicant has legal ownership of or control of the property that is or is being proposed as a Pain Management Clinic (examples include a copy of the deed if the property is owned by the applicant, a copy of the lease or license agreement if the property is not owned by the applicant).

(7) For Renewal Registration Certificates pursuant to 18-21(b), proof that the clinic for which the Registration Certificate is sought was operating within Hernando County as of June 14, 2011. Acceptable forms of proof shall include prior Certificate, utility bills, rent receipts, tax returns, or such similar documents as the Department may request.

(8) Designation of the physician who shall be responsible for complying with all requirements related to registration and operation of the clinic and the physician's DEA number. The designated physician must have a full, active, and unencumbered license to practice medicine in Florida, and shall practice at the clinic location for which the physician has assumed responsibility. Within ten (10) days after termination or absence of a designated physician, the clinic must notify the Department of the identify of another designated physician for the clinic or forfeit the clinic's certificate of use.

(9) A list of all persons, including the designated physician, associated with the management and/or operation of the clinic, whether paid or unpaid, part-time or full time, including all contract labor and independent contractors. This list shall include, but is not limited, to all owners, operators, physicians, employees and volunteers. For each and every person listed, the following additional information shall be provided:

a. The person's full name;

b. The person's title or position with the clinic (e.g. owner, operator, manager, employee, volunteer etc.);

c. The person's current home address, telephone number and date of birth;

d. A copy of the person's current Florida driver's license or a government-issued photo I.D.;

e. State whether the person has any financial or business interest in a pharmacy, as defined under chapter 465, Florida Statutes; and

f. A criminal history form or other similar document completed by the sheriff or such persons designated by the sheriff and which indicates whether said person has any criminal conviction(s) including all misdemeanor and felonies and, if so, a listing of said conviction(s). If there are no known criminal convictions, the form shall state same. The sheriff may charge a fee for each criminal background check performed and the applicant shall be responsible for paying said fees. No criminal history form or similar document may be accepted if dated earlier than sixty (60) days from the date filed with the Department.

(10) If during the Department's review of the Registration Certificate application, there is a deletion, substitution or addition of any person listed pursuant to subsection (9) above, the Department shall be immediately advised of such change(s) and shall be furnished all of the information required above, including a new criminal history form for each new person that has been substituted or added.

(11) State whether the Pain Management Clinic prescribes, or intends to prescribe, any controlled substance at the Pain Management Clinic site.

(12) State whether the Pain Management Clinic dispenses, or intends to dispense, controlled substances at the Pain Management Clinic site.

(13) State whether the Pain Management Clinic distributes, or intends to distribute controlled substances at the Pain Management Clinic site.

(14) Such additional information specifically requested by the Department as necessary in order for county staff to make a reasonable determination whether to grant or deny the requested Registration Certificate.

(15) A sworn and notarized statement, under oath and under penalty of perjury [837.02 F.S.] and false official statements [827.06 F.S.], from both the designated physician and the clinic owner attesting to the veracity and accuracy of the information provided in the application. The notarized statement shall further attest to all of the following:

- a. That the practice of the designated physician is, or will be, at the location stated in the Pain Management Clinic Registration Certificate application; and
- b. That no employees of the facility have been convicted of a drug-related crime within the five-year period to the date of application and that the Pain Management Clinic will not knowingly employ any such convicted felons thereafter.

(16) In the event that any above-required information changes during the Department's review, but prior to any decision to grant or deny being made, it shall be the responsibility of the applicant to advise the Department of such change(s) within ten (10) calendar days of the change.

(c) *Completeness of application.* It is the applicant's sole responsibility to provide accurate contact information when submitting the application to the Department. If the application for a Pain Management Clinic Registration Certificate is not properly completed, in the sole discretion of the Department, the Department shall notify the designated contact person listed in the application. A completed application must be received by the Department within twenty (20) calendar days of receipt of the deficiency notice from the Department in order to avoid assessment of another application fee. Failure to timely respond within the twenty (20) days shall result in a denial of the application as incomplete. A New Application must then be submitted that is accompanied by the full nonrefundable application fee, in order to request a Registration Certificate.

(d) *Inspections.* Any person authorized to enforce this article, including, but not limited to, law enforcement officers employed by or under the sheriff, upon showing of proper identification, may perform spot or random inspection(s) of the facility as necessary to determine whether or not the application submitted is accurate in all respects, to verify a physician licensed under chapter 458 or 459, Florida Statutes, is on the premises during all times medications are dispensed or prescribed, and/or whether the terms of this Article are being adhered to.

(e) Initial application fee. Each application for a Pain Management Clinic Registration Certificate shall be accompanied by a nonrefundable application fee in the amount of one thousand five hundred dollars (\$1,500.00). The application fee for a Pain Management Clinic Registration Certificate is in addition to the one-thousand-five-hundred-dollar annual fee/certificate renewal fee. Any changes to the application fee or certificate fee authorized by this Article may be accomplished by Resolution of the Board of County Commissioners without the need to revise this Article.

(f) Approval or Denial / Annual Certificate Fee. Department shall carefully review and verify the application materials and render a decision to either grant or deny the Registration Certificate within fifteen (15) business days of receipt of a complete application. Upon approval of its application for a Pain Management Clinic Registration Certificate in accordance with this Article, an Applicant shall pay a one-thousand-five-hundred-dollar (\$1,500.00) annual Certificate fee to the Department. The receipt of the annual Registration Certificate fee is a prerequisite to the Department issuing the Registration Certificate. The annual Registration Certificate fee is in addition to, and not in lieu of, the Registration Certificate application fee of one thousand five hundred dollars (\$1,500.00) required pursuant to subsection (d) above.

(g) Public record. Any information contained in any application under this Article is subject to the public records law, chapter 119, Florida Statutes, unless specifically exempted by state law.

Sec. 18-23. - Approval Criteria, Grounds for denial, non-renewal and revocation.

The county shall deny, not renew, or may revoke, a Pain Management Clinic Registration Certificate upon the occurrence of one (1) or more of the following:

- (1) An application contains false or missing information or is materially misleading on its face;
- (2) The clinic is not registered with the State of Florida in accordance with Chapter 458 or 459, Florida Statutes, if state registration is otherwise required;
- (3) The Pain Management Clinic has had its registration suspended or revoked by the State of Florida;
- (4) Failure to allow for inspection of the clinic by any law enforcement officer employed by or under the sheriff's office, any county code enforcement officer, or any other person authorized to enforce Article violations in Hernando County at any time the clinic is open or occupied;
- (5) Failure to abide by any provision of this Article, including but not limited to serious violations of continuing compliance conditions in Section 18-25;
- (6) Failure to obtain or maintain a valid land use approval, including violation of any applicable provision of the Comprehensive Plan and Zoning Code, including specifically the requirement to obtain a Zoning Permit or Certificate of Use for any new or modified facility, a change in use or similar reasons such as unpermitted construction or tenant improvements.
- (7) Allowing any person to work or volunteer at the clinic, whether paid or unpaid, who has been convicted of or plead guilty or *nolo contendere* to (even if sealed or expunged) any criminal offense, misdemeanor or felony, involving or relating to the prescribing, dispensing, distributing, supplying or selling of any controlled substance; or

(8) The facility is owned or operated by any person or has any contractual or employment relationship with a physician or other permitted health care practitioner as defined under chapter 456, Florida Statutes;

a. Whose Drug Enforcement Administration (DEA) number has ever been suspended or revoked;

b. Whose application for a license to prescribe, dispense, distribute, or administer a controlled substance has been denied, suspended or revoked by any jurisdiction;

c. Who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) any criminal offense, misdemeanor or felony, involving or relating to the prescribing, dispensing, distributing, supplying or selling of any controlled substance law; or

d. Whose license has been suspended or revoked as a result of physician's abuse of drugs or alcohol, or from the improper prescribing, dispensing or distributing of any controlled substance.

e. Whose license has been subjected to a licensure action or sanction, less than full suspension or revocation, taken as a result of physician's abuse of drugs or alcohol, or from the improper prescribing, dispensing or distributing of any controlled substance, provided such action was taken against the license within two years of the application date.

(9) If the payment for the application fee or the Registration Certificate fee is invalid or uncollectible for any reason.

(10) Failure to notify the Department of any change of information following the issuance of any Registration Certificate as required by section 18-25(a).

Sec. 18-24 - Appeal Procedures for Certificate Denial, Non-Renewal or Revocation.

(a) The Department shall provide written notice of a denial of any new or renewal Registration Certificate specifying in writing the grounds for the denial. The denial notice shall be sent by certified mail or hand delivery to the mailing address set forth on the application for the Pain Management Clinic Registration. The applicant whose application has received a denial may request a formal *de novo* appeal hearing before a Hearing Officer. All the appeal requirements of Section 18-24 are jurisdictional; failure to correctly file an appeal waives the applicant's rights to challenge the Department's decision.

(b) The appeal and request for a *de novo* appeal hearing must be received by the Department within ten (10) business days of the date the denial notice is mailed to the applicant. The applicant must file an appeal on an official appeal application with the Department before the appeal deadline. An appeal narrative shall be submitted to support the appeal and shall specify the specific alleged error or errors made by the Department citing specific code provisions of this Article along with any and all facts and evidence submitted as part of the application that support the applicant's position that the Registration Certificate was erroneously denied. A copy of the final action by the Department shall be attached to the appeal. The appeal shall be signed by the applicant and be accompanied by a one thousand dollar (\$1000.00) deposit toward the estimated costs. The deposit for costs will be returned to the applicant if the applicant prevails in the appeal, otherwise the deposit will be applied to the full costs of the hearing.

(c) The appeal shall be transmitted to the Hearing Officer as soon as possible after receipt by the Department. The Hearing Officer shall review the appeal, and may, upon motion of a party or on its own motion, determine if the jurisdictional appeal requirements of this Section have been met. If the appeal has not been properly filed, the Hearing Officer shall make this jurisdictional determination in writing and dismiss the appeal. In this case, the final action of the Department shall stand as the final decision of the County.

(d) If the appeal is properly filed, the Hearing Officer shall set a hearing date within thirty (30) business days of the receipt of the appeal by the Department, unless the parties agree to additional time. The Department shall transmit the final written decision together with the Department's application file and record of decision to the Hearing Officer with a copy to the appellant and the County Attorney's office.

(e) The Hearing Officer shall conduct a hearing in accordance with due process. At a minimum, the following procedures shall be observed:

1. The file constituting the record of decision by the Department shall be entered into evidence.

2. Pre-filed written testimony and evidence is encouraged prior to the hearing date.

3. The parties are permitted to present direct testimony and evidence at the hearing. All testimony shall be under oath and shall be recorded.

4. The applicant shall be entitled to cross examine County witnesses and the County shall be permitted to cross examine the Applicant's witnesses.

5. Formal rules of evidence shall not apply unless required by the Hearing Officer, but fundamental due process shall be observed and shall govern the proceedings.

6. The parties may submit proposed recommended orders for consideration of the Hearing Officer.

7. The Hearing Officer shall produce a written decision including findings of fact and conclusions of law within a reasonable time after conclusion of the hearing but no more than ten (10) business days after the hearing.

8. Notwithstanding the above, DOAH hearing procedures shall be followed in the event the matter is referred to DOAH. Local procedures shall be observed but DOAH procedures control in the event of a conflict.

9. All hearings and proceedings shall be open to the public.

10. The County shall be represented by the County Attorney's office.

11. If the Department prevails and the *de novo* decision of the Hearing Officer is consistent with the Department's action, the deposit for costs shall be applied to the cost of the Hearing Officer. If the Applicant prevails and the *de novo* decision of the Hearing Officer is inconsistent with the Department's action, the deposit for costs shall be returned in full to the applicant.

12. The decision of the Hearing Officer shall be the final decision of the County and may only be appealed to Circuit Court, in and for Hernando County, within thirty (30) days of said decision. Such an appeal shall not be a hearing *de novo* but shall be limited to appellate review of the record created before the Hearing Officer. Any decision of a DOAH Administrative law Judge shall be appealed as provided for in Florida law.

(f) Any clinic whose Registration Certificate is denied, non-renewed (except for an incomplete Registration Certificate application), or revoked, shall not be eligible to

reapply for five (5) years unless the denial, non-renewal or revocation is overturned on appeal. In addition, the owner(s) and the physician(s) listed on the application, regardless of the clinic's name, may not be an applicant for a Registration Certificate renewal at another clinic for a period of five (5) years, unless the individual was previously the applicant for that clinic, or unless the denial or non-renewal is based solely on an incomplete application.

Sec. 18-25. - Registration Certificate Continuing Compliance Requirements.

(a) Change of information following the issuance of Registration Certificate; fees.

Should any information or conditions change from that stated in the initial Registration Certificate information, the owner or operator shall provide that information to the Department within ten (10) calendar days of such change. Failure to report such information change within ten days is a violation of this Article and grounds for revocation. The following specific unreported changes shall trigger mandatory revocation or enforcement proceedings:

(1) Change of the Owner or Operator of the Pain Management Clinic shall require a New Application and payment of a New Application fee. Owners of State Registered clinics must also demonstrate that they meet all the ownership requirements set forth in applicable Florida Statutes.

(2) Change of the Designated Physician shall require providing all of the information required in subsection 18-22(b) above in connection with the new physician and paying the Department a five-hundred-dollar (\$500) Registration Certificate modification and processing fee. A current criminal history form shall be provided on the substituting physician (which the sheriff's office may charge a separate fee for).

(3) Substitution or addition of any person required to be listed in the application requirements of this Article (other than the owner or operator or designated physician) shall require providing all information set forth in subsection 18-22(b) above to the Department and paying the Department a one-hundred-dollar processing fee for each person. A current criminal history form shall be provided on all new persons (which the Sheriff's Office may charge a separate fee for).

(b) A valid Hernando County Pain Management Clinic Registration Certificate issued pursuant to this article must be prominently displayed in a common public area of the Pain Management Clinic.

(c) A Pain Management Clinic Registration Certificate is nontransferable and cannot be assigned. Whenever ownership or management of a Pain Management Clinic changes, a new application must be filed for a new Registration Certificate and a new nonrefundable application fee shall be paid (and, if approved, a new Registration Certificate fee shall be paid).

(d) Any law enforcement officer employed by or under the sheriff, any county code enforcement officer, or any other persons authorized to enforce county ordinances shall be allowed access for inspections of the clinic premises at any time the clinic is open or occupied.

(e) The Designated Physician shall practice full time at the clinic location for which the physician has assumed responsibility.

(f) The Designated Physician shall secure all prescription pads so that only authorized persons may access them. Every written prescription must include the clinic's name, address and Hernando County's Registration Certificate number.

(g) The Pain Management Clinic shall not limit the form of payment for services, prescriptions or drugs to cash only.

(h) The Pain Management Clinic shall be precluded from having any outdoor seating areas, queues, or customer waiting areas. All activities of the Pain Management Clinic, including all patient contact, examination, prescribing, dispensing, sale, display, and storage without limitation, shall be conducted entirely within a completely enclosed building. Mobile or temporary facilities (including mobile vans, motor homes, buses, trailers or movable structures, without limitation) are prohibited.

(i) No Pain Management Clinic may locate in any area not properly zoned and designated for use as "Business, Professional and Non-Profit Organizations Offices" or such other zoning designation allowed under the Hernando County Zoning Code.

(j) The Pain Management Clinic shall meet and satisfy all applicable land development regulations and applicable county codes and regulations.

(k) 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.

Sec. 18-26. - Revocation criteria and procedures

Revocation of previously issued Certificates requires due process procedures including adequate notice and an opportunity to be heard. The County may initiate revocation upon written notice to the Owner or Designated Physician which details the alleged violations of this Article. After a due process hearing conducted in a manner consistent with Section 18-24, and upon the demonstration to a hearing Officer by competent substantial evidence that a violation of this Article has occurred, including specifically any violation of the provisions in Sections 18-23 or any serious or continuing violations of provisions of 18-25, the County may revoke a Pain Management Clinic Registration Certificate. The full costs of Revocation enforcement action shall be paid by the holder of the Registration Certificate. Nothing herein prohibits the voluntary relinquishment of a Registration Certificate in lieu of a revocation proceeding.

Sec. 18-27. - Registration fees, renewal fees and charges.

Registration Certificates required for Pain Management Clinics shall be valid for only one (1) year, unless otherwise provided. Provided the Pain Management Clinic requesting renewal is in full compliance with this Article and no material information contained in its initial application has changed, a renewal Registration Certificate shall be issued by the Department, after the applicant pays an annual Registration Certificate renewal fee of one thousand five hundred dollars (\$1,500.00) to the Department. Unless otherwise provided, Renewals shall only be issued to clinics that were previously issued a Registration Certificate by the Department and who timely filed a renewal application in the Application Window. A Pain Management Clinic that fails to timely request renewal shall be required to file a new application and pay a new nonrefundable application fee.

Sec. 18-28. - Service of notice.

Any notice required by this article shall be in writing and sent by certified mail or hand delivery to the mailing address set forth on the application for the Pain Management Clinic Registration Certificate. The mailing address set forth in the application shall be considered the correct mailing address.

Sec. 18-29. - Inspections.

Any law enforcement officer employed by the sheriff's office, any code enforcement officer, or any other persons authorized to enforce county ordinances may enter the clinic premises and conduct an inspection to determine compliance with this article at any time the clinic is open or occupied.

Sec. 18-30 - Violations.

It shall be unlawful for any person to violate any provision of this article or to operate a Pain Management Clinic without a valid county issued Pain Management Clinic Registration Certificate. It shall be a violation for the property owner where the clinic is situated to allow any Pain Management Clinic to open or operate without a valid Pain Management Clinic Registration Certificate issued pursuant to this Article.

Sec. 18-31. – Criminal and Civil Penalties, Code Enforcement, Revocation Costs of Prosecution.

(a) Revocation of a Pain Management Clinic Registration Certificate may be pursued by the County at any time in addition to Code violation enforcement actions specified in this Article.

(b) Pursuant to section 125.69, Florida Statutes, any person or persons, firm or corporation, or any agent thereof who violates any provision of this section shall be subject to prosecution in the name of the state in the same manner as misdemeanors are prosecuted; and, upon conviction such person shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days or by both such fine and imprisonment. Each incident or separate occurrence of an act that violates this article shall be deemed a separate offense.

(c) Any person or persons, firm or corporation, or any agent thereof who violates any provision of this article may be prosecuted in the manner provided for in Chapter 2, Article III, of the Hernando County Code of Ordinances.

(d) The remedies and penalties herein are not intended to be cumulative and the sheriff's office and/or the county may institute any appropriate action or proceedings to prevent, restrain, enjoin, correct or abate a violation of this article as allowed by law.

(e) In any of the above Code Enforcement or Revocation actions, in the event the County prevails, the entire cost of prosecution, including attorney fees and witness costs are recoverable against the responsible parties, including but not limited to the Owner, Designated Physician or other person .

Sec. 18-32. - Allocation of fines, penalties and forfeitures.

For all enforcement actions initiated by the sheriff and prosecuted by or in the name of the sheriff or the State of Florida, all fines, penalties and forfeitures assessed by the court

or recovered shall be retained by the sheriff except as otherwise required to be shared with, or turned over to, the State of Florida. For all enforcement actions initiated and prosecuted by or in the name of the county, all fines, penalties and forfeitures assessed by the court or in applicable code enforcement proceedings, or otherwise recovered shall be retained by the County except as otherwise required to be shared with, or turned over to, the State of Florida.

SECTION III: Amendment and Revision to Hernando County Code Appendix A, [Zoning] Article V, [Administration], Section 2 (Zoning Permit and Certificate of Use):

Hernando County Code, Appendix A (Zoning), Article V (Administration), Section 2 (Zoning Permit and Certificate of Use) is amended to add application requirements and disclaimers:

Section 2. - Zoning permit and certificate of use.

A. *[Zoning permit required prior to construction or permit:]* A zoning permit shall be required for any of the following unless otherwise provided for in this ordinance:

- (1) Excavation, construction or alteration relating to any building;
- (2) Excavation, construction or alteration relating to any of the following structures:
 - (a) Signs;
 - (b) Structures with impervious roof coverings greater than five (5) feet in height or forty (40) square feet in size;
 - (c) Boat lifts;
 - (d) Towers;
 - (e) Retaining walls;
 - (f) Docks;
 - (g) Decks;
 - (h) Residential remodel;
 - (i) Any alteration which changes a setback;
 - (j) Other similar items as determined by the administrative official;

It shall be unlawful and a violation of this Code to commence any excavation or construction or any alteration of any structure which requires a zoning permit until the administrative official has issued a zoning permit authorizing such work. If no zoning permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the proper court of record and evidence of the lack of a zoning permit shall establish a prima facie case for the issuance of the restraining order.

B. *Certificate of use prior to occupancy and change of use:* It shall be unlawful and a violation of this Code to occupy any newly erected or altered structure or to change the use of any premises even though no structure was erected or altered until the administrative official has issued a certificate of use authorizing such occupancy.

C. *Exceptions:* No zoning permit or certificate of use shall be required in the following cases:

- (1) Recurring maintenance work regardless of cost.
- (2) Installation of required improvements according to authorized subdivision construction drawings.
- (3) Alterations to residential structures which do not change the exterior dimensions of the structure.

D. *Procedure:*

- (1) The procedure for securing a zoning permit shall be as follows:
 - (a) *Application:* In applying to the administrative official for a zoning permit, the applicant shall submit a plat along with the application, drawn to scale, showing the dimensions of the lot to be built upon, the outside dimensions of all structures to be constructed or altered and all existing structures, yard depths, and any other information necessary for determining conformance with the zoning ordinance. The applicant shall submit a sworn statement attesting to compliance with applicable federal, state and local permits/approvals in the form approved by the Department.
 - (b) *Issuance:* If the proposed construction or alteration conforms with all applicable provisions of the zoning ordinance and all other applicable ordinances, regulations and codes, the administrative official shall issue a zoning permit authorizing such construction or alteration. If the proposed construction or alteration fails to conform, the administrative official shall refuse to issue a zoning permit and shall deliver written notice to the applicant stating the reasons for the refusal. The administrative official shall act upon applications for zoning permits within two (2) weeks from the date of their submission.
 - (c) ~~*Validity:* The issuance of a zoning permit by the administrative official shall not waive any provision or regulation of the zoning ordinance.~~
 - (d) ~~*Duration:* A zoning permit shall become void six (6) months from the date of issuance unless substantial progress has been made by that date on the construction or alteration authorized therein. Substantial progress, as set forth herein, shall mean that binding contracts for the construction of the main building, buildings, or other improvements have been let; or in the absence of contracts that the main building, buildings, or other improvements, are under construction to a substantial degree, or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed.~~
- (2) The procedure for securing a certificate of use shall be as follows:
 - (a) *Application:* In applying to the administrative official for a certificate of use, the applicant shall submit a plat along with the application, drawn to scale, showing the dimensions of the lot to be built upon, the outside dimensions of all structures to be constructed or altered and all existing structures, yard depths, and any other information

necessary for determining conformance with the zoning ordinance. In applying to the administrative official for a certificate of use, the applicant shall notify the administrative official in writing of the date on which the occupancy of any new or altered structure or the new use of any premises will be ready to commence. The applicant shall submit a sworn statement attesting to compliance with applicable federal, state and local permit/approval in a form approved by the Department.

(b) *Issuance:* If the newly erected or altered structures and the new use of premises conform with all applicable provisions of the zoning ordinance and all other applicable ordinances, regulations, and codes, the administrative official shall issue a certificate of use authorizing the occupancy thereof. If the structure or use fails to conform, the administrative official shall refuse to issue a certificate of use and shall deliver written notice to the applicant stating the reasons for the refusal. The administrative official shall inspect a new structure on the premises for which a new use is proposed and shall issue or refuse a certificate of use within three (3) days after the date on which the new use is ready to commence.

~~(c) — *Validity:* The issuance of a certificate of use by the administrative official shall not waive any provision or regulation of the zoning ordinance.~~

- (3) *Validity / no waiver / estoppel.* The issuance of a certificate of use or zoning permit by the County shall not waive any provision or regulation of the Hernando County Code. The failure of the County to address a particular permit, approval, condition, term, or restriction shall not relieve the Applicant of the necessity of complying with the law governing said use, permitting requirements, conditions, terms, or restrictions. It is for the Applicant to ascertain from the local code what is required to obtain the use or development sought. No rights to obtain development orders, permits or approvals nor any other rights to develop or engage in use or construction on property in Hernando County have been granted or implied simply by the County's approval of a Certificate of Use or Zoning Permit under this Article. The Applicant may not attempt to force, coerce, or intimidate the County to approve any other permit or authorization by asserting that the County has committed to such approvals based on the theory of vested rights or equitable estoppel or any other legal theory based on the County's approval of use or construction under this Article.

SECTION IV: Amendment and Addition to Hernando County Code Appendix A, [Zoning] Article V, [Administration], Section 10, (Temporary Moratorium on Pain Management Clinics):

Hernando County Code, Appendix A (Zoning), Article V (Administration), Section 10 (Zoning Permit and Certificate of Use) is amended to ratify, amend and extend the Moratorium established by Ordinance 2011-9:

Section 10. - Moratorium established by Ordinance 2011-9 concerning the establishment and operation of New Pain Management Clinics and Expansion of Existing Pain Management Clinics.

[Ratification of Temporary Moratorium] On June 14, 2011, the Board of County Commissioners of Hernando County enacted Ordinance 2011-9 and established a Temporary Moratorium concerning the establishment, opening, and operation of new Pain Management Clinics and the expansion of existing Pain Management Clinics within unincorporated Hernando County. The moratorium established by Ordinance 2011-9 is incorporated herein by this reference, is hereby ratified, and shall terminate on June 14, 2012 according to its own terms. (footnote ###):

Footnote ### . The text of Section 21-235, operative from June 14, 2011 to June 14, 2012, is set forth below:

Sec. 21-235. - Certificate of use required; temporary moratorium on new pain management clinics and expansion of existing pain management clinics.

(a) No pain management clinic, as defined in this article, may operate in unincorporated Hernando County, nor may any person operate a pain management clinic in unincorporated Hernando County without first obtaining a pain management clinic certificate of use issued by the department pursuant to this article; except any pain management clinic, operating in Hernando County as of the effective date of this article, who has filed a complete application and paid all requisite fees within ninety (90) days from the effective date of this article may continue operating until the department renders a decision to either grant or deny the certificate of use and notifies the applicant of its decision. The clinic must obtain its certificate of use, if approved, from the department within ten (10) business days of notification by the department. Certificates of use shall be granted only for clinics that have satisfied all requirements of this article including the payment of the applicable application and certificate of use fees.

(b) Each pain management clinic shall stand alone and shall require its own certificate of use.

(c) In order to allow the department time to process the applications of all pain management clinics operating in unincorporated Hernando County as of the effective date of this article and to allow staff time to examine and develop criteria regarding the future siting of pain management clinics, no new pain management clinics may open or operate in Hernando County or make application for a pain management clinic, and no existing pain management clinic may expand for the shorter of (i) twelve (12) months from the effective date of this article or (ii) the enactment of a new ordinance by the board. For purposes of this provision, "new" shall mean not previously operating as a pain management clinic within unincorporated Hernando County (at the same location where the certificate of use is sought) as of the effective date of this article.

(d) Beginning on the effective date of this article, the board hereby imposes a moratorium on the issuance of certificates of use, zoning approvals, (including building permits) and development approvals of any kind for the establishment, location or expansion of pain management clinics on any property located in unincorporated Hernando County for the shorter of (i) twelve (12) months from the effective date of this article or (ii) the enactment of a new ordinance by the board. However, this moratorium shall not apply to the issuance of a certificate of use for a pain management clinic in existence as of the effective date of this article and which has timely submitted a complete and unexpired application in accordance with subsection (a) above.

SECTION V. APPLICABILITY. This Ordinance shall be applicable throughout the unincorporated area of Hernando County.

SECTION VI. SEVERABILITY. It is declared to be the intent of the Board of County Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this

ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this ordinance.

SECTION VII. SAVINGS CLAUSE. All development orders, permits, enforcement orders, ongoing enforcement actions, and all other actions of the Board of County Commissioners, the Planning and Zoning Commission, the Zoning Administrator, County Enforcement Boards, Hearing Officers, and Special Magistrates, and all other County Officials, issued pursuant to the regulations and procedures established prior to this effective date of this Ordinance amendment or repeal shall remain in full force and effect.

SECTION VIII. CONFLICTING PROVISIONS. Special acts of the Florida Legislature applicable only to unincorporated areas of Hernando County, Hernando 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 either adoption or amendment of the Comprehensive Plan, pursuant to Chapter 163, part II, Florida Statutes.

SECTION IX. FILING WITH THE DEPARTMENT OF STATE. The clerk shall be and is hereby directed 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, FL 32399-0250.

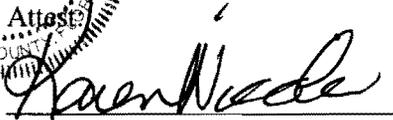
SECTION X. INCLUSION IN CODE / CODIFICATION. It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, any section or subsection of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate designation. Section V through Section XI need not be codified.

SECTION XI. EFFECTIVE DATE. This ordinance shall take effect immediately upon filing with the Department of State.

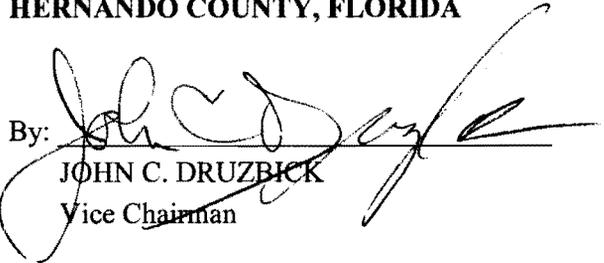
BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF

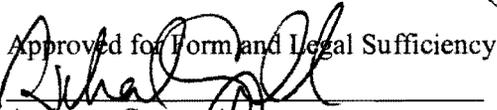
HERNANDO COUNTY in Regular Session this 12th day of JUNE 2012.



Attest:

KAREN NICOLAI
Clerk

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

By: 
JOHN C. DRUZBECK
Vice Chairman

Approved for Form and Legal Sufficiency

Assistant County Attorney