

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 306 OF THE CODE OF INDIAN RIVER COUNTY ENTITLED "MISCELLANEOUS OFFENSES AND PROGRAMS" TO CREATE SECTION 306.15 "MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES PROHIBITED" AND AMENDING CHAPTER 315 OF THE CODE OF INDIAN RIVER COUNTY ENTITLED "INDIAN RIVER COUNTY PAIN MANAGEMENT CLINIC AND CONTROLLED SUBSTANCES ORDINANCE" TO ELIMINATE REGULATIONS AND PROHIBITIONS OF CERTAIN ACTIVITIES RELATING TO MEDICAL MARIJUANA; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, in 2011, the Indian River County Board of County Commissioners (the "Board") created Chapter 315 of the Code of Indian River County entitled "Indian River County Pain Management Clinic and Controlled Substances Ordinance"; and

WHEREAS, in anticipation of Amendment 2, allowing for the use of marijuana for certain medical conditions on the November 8, 2016 ballot, the Board adopted regulations to prevent a proliferation of medical marijuana distribution facilities; and

WHEREAS, during the 2017 Special Session, the Florida Legislature enacted a bill preempting most local government regulation of medical marijuana; and

WHEREAS, local governments are allowed to either ban medical marijuana treatment center dispensing facilities or allow them in the same manner as the local government would allow a pharmacy regulated under Chapter 465, Florida Statutes; and

WHEREAS, as the City of Sebastian will allow medical marijuana treatment center dispensing facilities and the City of Vero Beach intends to grandfather in one medical marijuana treatment center dispensing facility, the Board acknowledges that citizens of Indian River County have adequate access to such facilities and thus wishes to prohibit medical marijuana treatment center dispensing facilities in the unincorporated areas of Indian River County;

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

Section 1. Enactment Authority.

Article VIII, section 1 of the Florida Constitution and chapter 125, Florida Statutes, vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county. The Board specifically determines that the enactment of this ordinance is necessary to protect the health, safety and welfare of the residents of Indian River County.

Section 2. Legislative Findings.

The Board finds that the "Whereas" clauses above are true and correct, and hereby incorporates such clauses as the legislative findings of the Board.

Section 3. Amendment of Chapter 306 (Miscellaneous Offenses and Programs).

Chapter 306 of the Code of Indian River County, Florida is hereby amended to read as follows (added language is underlined, and deleted language noted by strikethrough):

CHAPTER 306. MISCELLANEOUS OFFENSES AND PROGRAMS

* * *

Section. 306.15. Medical Marijuana Treatment Center Dispensing Facilities Prohibited.

Medical Marijuana Treatment Center Dispensing Facilities as defined under section 381.986, Florida Statutes, shall be prohibited in the unincorporated areas of Indian River County. Any ordinances or other provisions of the Code of Indian River County to the contrary are repealed.

Section 4. Amendment of Chapter 315 (Pain Management Clinics and Controlled Substances).

Chapter 315 of the Code of Indian River County, Florida is hereby amended to read as follows (added language is underlined, and deleted language noted by strikethrough):

CHAPTER 315. PAIN MANAGEMENT CLINICS, AND CONTROLLED SUBSTANCES ~~AND MEDICAL MARIJUANA~~

* * *

Section. 315.02. Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

- (1) *Pain management clinic* shall mean any publicly or privately owned facility: that advertises in any medium for any type of pain management services; or where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic

nonmalignant pain; or any Medical Marijuana Treatment Center as defined below, unless:

- a. The clinic is licensed as a facility pursuant to chapter 395, Florida Statutes;
- b. The majority of physicians who provide services in the clinic primarily provide surgical services;
- c. The clinic is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;
- d. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents or fellows;
- e. The clinic does not prescribe or dispense marijuana or controlled substances for the treatment of pain; or
- f. The clinic is owned by a corporate entity exempt from federal taxation under 26 USC section 501(c)(3).

Any clinic or facility meeting the definition above shall be considered a pain management clinic, regardless of its use of any other descriptive name, such as a center for "wellness," "detox," "detoxification," "urgent care," etc.

- (2) *Applicable law* shall mean this Code, applicable Florida law, including, without limitation, rules and regulations promulgated by the Florida Department of Health, the Florida Board of Medicine, the Florida Board of Osteopathic Medicine, the Florida Board of Pharmacy, and applicable federal law.
- (3) *Board* shall mean the Indian River County Board of County Commissioners.
- (4) *Controlled substance* shall mean a controlled substance listed in Schedules II, III, or IV in section 893.03, Florida Statutes.
- (5) *Chronic nonmalignant pain* shall mean pain unrelated to cancer or rheumatoid arthritis which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

- (6) *Department* shall mean the Indian River County Community Development Department.
- (7) ~~Reserved. *Marijuana* shall mean cannabis as defined in Section 893.02(3), Florida Statutes. The term shall include "low-THC cannabis," as defined in Section 381.986(1)(b), Florida Statutes.~~
- (8) ~~Reserved. *Medical Marijuana Treatment Center* shall mean an entity that acquires, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes or dispenses marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department of Health or its successor agency, pursuant to Article X, Section 29 of the Florida Constitution.~~
- (9) *Pharmacy* shall mean any pharmacy that is subject to licensure or regulation by the Florida Department of Health under chapter 465, Florida Statutes, and dispenses controlled substances in Indian River County.
- (10) *Pain Clinic Responsible Party* shall mean any person or entity which owns, in whole or in part, or operates a pain management clinic; any person who manages or supervises the operations of a pain management clinic; any person who has been designated as the responsible physician or osteopathic physician for a pain management clinic, pursuant to 458.3265(1)(c) or 459.0137(1)(c), Florida Statutes; and any person who participates, directly or indirectly, in any activity regulated or prohibited by this chapter.
- (11) *Pharmacy Responsible Party* shall mean any person or entity which owns, in whole or in part, or operates a pharmacy engaged in activity regulated or prohibited by this chapter; any person who manages or supervises any activity regulated or prohibited by this chapter; and any person who participates, directly or indirectly, in any activity regulated or prohibited by this chapter.
- (12) *Qualified pain management clinic* shall mean:
- a. A pain management clinic which is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or

- b. A pain management clinic which is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties or the American Osteopathic Association and perform interventional pain procedures of the type routinely billed using surgical codes.

Except as otherwise provided, a qualified pain management clinic shall be deemed to be a pain management clinic for all purposes set forth herein.

Section 315.03. Prohibited Activities.

Each of following activities shall be prohibited and shall constitute a violation of this Code:

- (1) Operation of a pain management clinic without a valid and current permit issued pursuant to section 315.04;
- (2) Operation of a pain management clinic without a valid and current business tax receipt;
- (3) Operation of a pain management clinic without a valid and current registration pursuant to sections 458.3265 or 459.0137, Florida Statutes, ~~or registered by the Department of Health or its successor agency, pursuant to Article X, Section 29 of the Florida Constitution, unless such clinic is exempt from registration under such statute or the Florida Constitution;~~
- (4) Submittal of a permit application, any sworn statement, or any other information required by this chapter, which contains materially false information;
- (5) Operation of a pain management clinic in violation of a sworn statement submitted to pursuant to sections 315.04 or 315.05;
- (6) Operation of a pain management clinic or pharmacy in violation of applicable law;

- (7) Prescribing or dispensing of controlled substances ~~or marijuana~~ in violation of applicable law;
- (8) Activity within a pain management clinic with respect to a controlled substance in violation of the standards of practice set forth in section 456.44(3), Florida Statutes;
- (9) Operation of a pain management clinic in violation of the facility and physical operations requirements, the infection control requirements, the health and safety requirements, the quality assurance requirements or the data collection and reporting requirements set forth in sections 458.3265(2)(f)-(j) and 459.0137(2)(f)-(j), Florida Statutes, as applicable;
- (10) Prescribing, administering or dispensing a controlled substance without a valid and current controlled substance registration number issued by the United States Department of Justice, Drug Enforcement Administration;
- (11) Operation of a pain management clinic or pharmacy in a manner which allows, permits or encourages persons to stand, sit (including inside parked cars), gather or loiter in or about the clinic's parking area, for a period of time exceeding that which is reasonably required to arrive and depart the parking area, and to walk to and from the parking area and the clinic;
- (12) Continued leasing or permitted use of a property or structure which is used as a pain management clinic or pharmacy if (a) the landlord or property owner knows or, through the exercise of reasonable care should know, that the clinic or pharmacy is being operated in violation of applicable law, and (b) despite the passage of a reasonable period of time to do so, the landlord or property owner has failed or refused to take reasonable measures to stop or prevent the continued illegal activity on the premises; or
- (13) Failure to advise the Department of any change in any information, statements, facts or circumstances, as required by section 315.04(10).
- ~~(14) Cultivation, administration or consumption of marijuana at a pain management clinic, including but not limited to Medical Marijuana Treatment Centers; or~~
- ~~(15) Operating a Medical Marijuana Treatment Center that is not wholly owned and operated by one or more~~

- ~~a. board-certified anesthesiologists, physiatrists, or neurologists; or~~
- ~~b. board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties or the American Osteopathic Association and perform interventional pain procedures of the type routinely billed using surgical codes.~~

~~(16) Cultivation of marijuana, except as specifically authorized per section 381.986, Florida Statutes.~~

Section 315.04. Permit Required for Operation of Pain Management Clinic.

- (1) Permit Required. No pain management clinic shall operate by any means in Indian River County without a valid and current pain management clinic permit issued by the Department.
- (2) Application. Any pain management clinic requesting issuance of a pain management clinic permit shall complete and submit to the Department a sworn application, on a form provided by the Department, containing, at a minimum, the following information:
 - a. The name and address of the pain management clinic;
 - b. The name and address of each owner of the pain management clinic (including, if the owner is a business entity such as a corporation, limited liability company, etc, the name and address of each officer, manager or managing member, general partner or other comparable person authorized by state law to manage the affairs of the business entity), each person who will be managing or supervising the activities of the pain management clinic, and each person who will be prescribing or administering controlled substances, ~~and each person who will be acquiring, possessing, processing, transferring, selling, distributing or dispensing marijuana at the pain management clinic;~~
 - c. The name and address of the person who has been designated as the responsible physician or osteopathic physician for the pain management clinic, pursuant to sections 458.3265(1)(c) or 459.0137(1)(c), Florida Statutes, if applicable;

- d. The name and address of the person or entity which owns the real property upon which the pain management clinic will be operated;
- e. Proof that the applicant is currently registered as a pain management clinic with the Florida Department of Health, pursuant to sections 458.3265 or 459.0137, Florida Statutes ~~or registered as a Medical Marijuana Treatment Center, pursuant to Article X, Section 29 of the Florida Constitution;~~
- f. Proof that any person who will be prescribing or administering controlled substances at the pain management clinic has a valid and current controlled substance registration number issued by the United States Department of Justice, Drug Enforcement Administration, including the controlled substance registration number for each such person;
- g. A sworn statement certifying that within the ten (10) years prior to submittal of the application, neither the pain management clinic, nor any person identified pursuant to subsections b, c or d above, has been found by any county or municipal board, commission or council, or by any state or federal court, or by any state or federal regulatory body, to have acted with respect to controlled substances or marijuana in violation of applicable law; and
- h. A sworn statement certifying that the pain management clinic, and every other clinic owned or operated by any person identified pursuant to subsections b, c or d above, will, during the term of the permit, be operated in compliance with applicable law.
- ~~i. Proof that a Medical Marijuana Treatment Center is wholly owned and operated by one or more
 - ~~1. board-certified anesthesiologists, physiatrists, or neurologists; or~~
 - ~~2. board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties or the American Osteopathic Association and perform interventional pain procedures of the type routinely billed using surgical codes.~~~~

- (3) ~~Abbreviated application for qualified pain management clinics that do not acquire, possess, process (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute or dispense marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers. In lieu of completing the application form described in subsection (2), a qualified pain management clinic that does not acquire, possess, process (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute or dispense marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers requesting issuance of a pain management clinic permit may complete and submit to the department a sworn application, on a form provided by the department, containing, at a minimum, the following information:~~
- a. The name and address of the pain management clinic;
 - b. The name and address of the owner of the pain management clinic;
 - c. The name and address of all physicians who will be prescribing controlled substances at the pain management clinic;
 - d. Proof that the pain management clinic meets the definition of a "qualified pain management clinic" which proof may consist of written verification or confirmation from the State of Florida that the pain management clinic is exempt from state registration pursuant to [F.S.] §§ 458.3265(1)(a)2g or h or 459.0137(1)(a)2g or h; and
 - e. A sworn statement certifying that the pain management clinic, and every other clinic owned or operated by any person identified pursuant to subsections b or c above, will, during the term of the permit, be operated in compliance with applicable law.
- (4) **Permit Application Fee.** A permit application fee shall be paid by the applicant at the time of submittal of the application, including renewal. The amount of the fee shall be set by resolution of the Board. The amount shall be sufficient to recover the County's approximate cost of reviewing and acting upon the application.
- (5) **Denial of Application.** The application for a pain management clinic permit shall be denied if any of the following facts are found to exist and are not cured within ten (10) days of written notice of such deficiency:
- a. The applicant fails to pay the required permit application fee; or

- b. The applicant fails to submit all information and statements required in subsection (2) or (3) above, or the applicant has submitted such information and statements but such information and statements are found to contain materially false information.
- (6) Issuance of Permit. The Department shall issue the permit within twenty (20) days of submittal of a fully complete application, if the applicant has submitted all information required in subsection (2) or (3) and none of the facts set forth in subsection (5) is found to exist.
- (7) Term of Permit. A pain management clinic permit shall remain in effect for a term of two (2) years. Thereafter, a permit shall be subject to renewal in the same manner that permits are issued initially as set forth in subsections (2) through (6).
- (8) Appeal. If an application for issuance or renewal of a pain management clinic permit is denied, the applicant shall have the right of appeal as set forth in section 100.06 of this Code. The denial shall be considered a decision of a department head for the purpose of applying section 100.06. An appeal fee shall be paid by the applicant at the time of filing an appeal to the Board. The amount of the fee shall be set by resolution of the Board. The amount shall be sufficient to recover the County's approximate cost of reviewing and acting upon the appeal.
- (9) Revocation of Permit. A pain management clinic permit shall be subject to revocation in proceedings before the Indian River County Code Enforcement Board or any court of competent jurisdiction, in the event that:
- a. The information or statements submitted to obtain issuance or renewal of the permit contained materially false information;
 - b. The permit holder, or any Pain Clinic Responsible Party, has engaged in activity prohibited by section 315.03;
 - c. The permit holder, or any Pain Clinic Responsible Party, has been found by any county or municipal board, commission or council, or by any state or federal court, or by any state or federal regulatory body, to have acted with respect to controlled substances or marijuana in violation of applicable law; or
 - d. The permit holder, although required to be registered, is no longer registered with the Florida Department of Health, pursuant to sections 458.3265 or

459.0137, Florida Statutes, or registered as a Medical Marijuana Treatment Center, pursuant to Article X, Section 29 of the Florida Constitution, or no longer holds a current business tax receipt for a pain management clinic, or the controlled substance registration issued by the United States Department of Justice, Drug Enforcement Administration to any person prescribing, administering or dispensing controlled substances at the pain management clinic has been suspended, revoked or denied renewal.

- (10) Emergency Suspension of Permit. Upon clear and convincing proof that one or more of the events set forth in subsection (9) have occurred, and upon a finding that continued operation of the pain management clinic presents an immediate danger to the health, safety and welfare of the residents of Indian River County, the Department shall be authorized immediately to suspend the pain management clinic's permit. In such event, the permit holder shall have the right of appeal as set forth in section 100.06 of this Code. The suspension shall be considered a decision of a department head for the purpose of applying section 100.06. All aspects of the appeal shall be expedited. An appeal fee shall be paid by the applicant at the time of filing an appeal to the Board. The amount of the fee shall be set by resolution of the Board. The amount shall be sufficient to recover the County's approximate cost of reviewing and acting upon the appeal. Any emergency suspension pursuant to this subsection shall continue for a period not to exceed six (6) months; provided, however, that if revocation of the permit is sought, the Code Enforcement Board or court of competent jurisdiction in which the revocation request is pending may extend the suspension beyond six (6) months until completion of the revocation proceedings, if necessary to protect the health, safety and welfare of the residents of Indian River County.
- (11) Change in Information or Statements. The permit holder shall notify the Department in writing of any change in any information or statements submitted pursuant to subsections (2) a. – hi. or (3)a. – d. above, or of any change in any facts or circumstances such that any information or statements submitted pursuant to subsections (2) a. – hi. or (3)a. – d. are no longer completely true and accurate. Such notification shall be provided within thirty (30) days of the change.

* * *

Section 5. Severability. If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 6. Codification. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made part of the Indian River County Code, and that the sections of this ordinance may be renumbered or re-lettered and the word ordinance may be changed to section, article or such other appropriate word or phrase in order to accomplish such intention.

Section 7. Effective Date. This ordinance shall become effective upon filing with the Florida Department of State.

This ordinance was advertised in the Indian River Press Journal on the ____ day of _____, 2017, for a public hearing to be held on the ____ day of _____, 2017, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman Joseph E. Flescher
Vice Chairman Peter D. O'Bryan
Commissioner Susan Adams
Commissioner Bob Solari
Commissioner Tim Zorc

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day of _____, 2017.

**BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA**

By: _____
Joseph E. Flescher, Chairman

ATTEST: Jeffrey R. Smith, Clerk of Court and Comptroller Approved as to form and legal sufficiency:

By: _____
Deputy Clerk

Dylan Reingold, County Attorney

EFFECTIVE DATE: This ordinance was filed with the Florida Department of State on the ____ day of _____, 2017.