

ORDINANCE NO. 2017-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING CHAPTER 315 (PAIN MANAGEMENT CLINICS, CONTROLLED SUBSTANCES AND MEDICAL MARIJUANA) OF THE CODE OF INDIAN RIVER COUNTY TO REVISE REGULATIONS AND PROHIBITIONS OF CERTAIN ACTIVITIES RELATING TO LOW-THC AND MEDICAL CANNABIS; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, in 2016, the Indian River County Board of County Commissioners (the "Board") amended Chapter 315 of the Code of Indian River County entitled "Indian River County Pain Management Clinic and Controlled Substances Ordinance" addressing medical marijuana under Amendment 2; and

WHEREAS, the Board wishes to regulate low-THC and medical cannabis, as set forth in section 381.986, Florida Statutes, in a similar manner as medical marijuana under Amendment 2;

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 315 (Pain Management Clinics, Controlled Substances and Medical Marijuana).

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, CONTROLLED SUBSTANCES
AND MEDICAL MARIJUANA**

* * *

Section. 315.02. Definitions.

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

* * *

- (7) *Marijuana* shall mean cannabis as defined in Section 893.02(3), Florida Statutes. The term shall include “low-THC cannabis,” and “medical cannabis” as defined in Section 381.986(1)(b), Florida Statutes.

- (8) *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 or approved by the department of health or its successor agency, pursuant to Article X, Section 29 of the Florida Constitution or Section 381.986, Florida Statutes.

* * *

Section 315.03. Prohibited Activities.

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

* * *

- (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 or approved by the Department of Health, pursuant to Article X, Section 29 of the Florida Constitution or Section 381.986, Florida Statutes, unless such clinic is exempt from registration or approval ~~under such statute;~~

* * *

- (14) ~~Cultivation, administration~~ Administration or consumption of marijuana at a pain management clinic, unless otherwise allowed by state law.

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 or approved as a Medical Marijuana Treatment Center, pursuant to Article X, Section 29 of the Florida Constitution or section 381.986, Florida Statutes;

- 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. Unless otherwise prohibited or preempted by state statute or Department of Health rule, a 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. Unless otherwise prohibited or preempted by state statute or Department of Health rule, proof 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.

* * *

Section 4. 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 5. 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 6. 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 Tim Zorc	_____
Commissioner Bob Solari	_____

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.