

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, AMENDING SECTION 315.02 (DEFINITIONS) AND SECTION 315.03 (PROHIBITED ACTIVITIES) OF CHAPTER 315 (PAIN MANAGEMENT CLINICS, CONTROLLED SUBSTANCES AND MEDICAL MARIJUANA) OF THE CODE OF INDIAN RIVER COUNTY, FLORIDA TO REVISE THE DEFINITION OF A MEDICAL MARIJUANA TREATMENT CENTER AND CLARIFY THE PROHIBITED ACTIVITIES; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Indian River County Board of County Commissioners previously adopted regulations concerning medical marijuana treatment centers in the event Amendment 2 was approved by the voters; and

WHEREAS, the Indian County Board of County Commissioners desires to clarify certain aspects of such regulations including the prohibition on cultivating marijuana within Indian River County, unless otherwise exempted per section 381.986, Florida Statutes;

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 Section 315.02 (Definitions) and Section 315.03 (Prohibited Activities) of Chapter 312 (Pain Management Clinics, Controlled Substances and Medical Marijuana).

New language indicated by underline, and deleted language indicated by ~~strikethrough~~.

Section 315.02 (Definitions) and Section 315.03 (Prohibited Activities) of Chapter 315 (Pain Management Clinics, Controlled Substances and Medical Marijuana) of the Code of Indian River County, Florida is hereby amended to read as follows:

**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:

- (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 F.S. Ch. 395;
 - 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 fifty million dollars (\$50,000,000.00);
 - 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 F.S. § 893.03.
- (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 ninety (90) days after surgery.
- (6) Department shall mean the Indian River County Community Development Department.
- (7) Marijuana shall mean cannabis as defined in F.S. § 893.02(3). The term shall include "low-THC cannabis," as defined in F.S. § 381.986(1)(b).
- (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 by the ~~department~~ 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 F.S. Ch. 465, 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 F.S. § 458.3265(1)(c) or 459.0137(1)(c), 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 (1) or more board-certified anesthesiologists, physiatrists, or neurologists; or
 - b. A pain management clinic which is wholly owned and operated by one (1) 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 F.S. § 458.3265 or 459.0137, 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 F.S. § 456.44(3);
- (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 F.S. §§ 458.3265(2)(f)—(j) and 459.0137(2)(f)—(j), 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;
- (13) Failure to advise the department of any change in any information, statements, facts or circumstances, as required by subsection 315.04(10);
- (14) Cultivation, administration ~~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 (1) 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 4. Codification. It is the intention of the Board of County Commissioners that the provision 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 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. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the ____ day of _____, 2016, for a public hearing to be held on the __ day of November, 2016, at which time it was moved for adoption by Commissioner _____, seconded by Commissioner _____, and adopted by the following vote:

Chairman Bob Solari	_____
Vice-Chairman Joseph E. Flescher	_____
Commissioner Wesley S. Davis	_____
Commissioner Tim Zorc	_____
Commissioner Peter D. O'Bryan	_____

The Chairman thereupon declared the ordinance duly passed and adopted this ____ day of November, 2016.

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

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**BY _____
DYLAN REINGOLD
COUNTY ATTORNEY**

By: _____
Bob Solari, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: _____
Deputy Clerk

EFFECTIVE DATE: This Ordinance was filed with the Department of State on the ____ day of November, 2016.