

**CITY OF NORTH LAUDERDALE, FLORIDA**

**ORDINANCE NO. 12-03-1265**

**AN ORDINANCE OF THE CITY OF NORTH LAUDERDALE RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING CHAPTER 86 OF THE CITY'S CODE OF ORDINANCES ENTITLED "BUSINESS LICENSES AND REGULATIONS"; SPECIFICALLY CREATING ARTICLE VI, ENTITLED "HEALTH CLINICS" BY ADDING DIVISION 1 TO BE ENTITLED "PAIN MANAGEMENT CLINICS"; PROVIDING FOR LEGISLATIVE FINDINGS AND AUTHORITY; PROVIDING FOR THE PURPOSE AND INTENT; RECOGNIZING THE EMERGENCY NEED TO REGULATE CERTAIN PAIN MANAGEMENT CLINICS; PROVIDING FOR DEFINITIONS; REQUIRING LICENSURE OF CERTAIN PAIN MANAGEMENT CLINICS; PROVIDING FOR LICENSING EXEMPTIONS; PROVIDING FOR GROUNDS TO DENY A LICENSE OR REVOKE A LICENSE; PROVIDING FOR REVIEW OF LICENSE DENIAL OR REVOCATION; PROVIDING FOR ADDITIONAL LICENSE COMPLIANCE REQUIREMENTS; PROVIDING FOR LICENSE RENEWALS; PROVIDING FOR VIOLATIONS AND INSPECTIONS; PROVIDING FOR SERVICE OF NOTICE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ALLOCATION OF FEES AND FINES; PROVIDING REPORTING REQUIREMENTS RELATED TO ARRESTS FOR FELONY OFFENSES CONCERNING POSSESSION, DELIVERY, DISTRIBUTION, SELLING, MANUFACTURING OR PURCHASE OF ILLICIT DRUGS; PROVIDING FOR REPORTING REQUIREMENTS FOR ALL DISCIPLINARY ACTIONS INITIATED AGAINST PHYSICIANS AND HEALTHCARE PRACTITIONERS ASSOCIATED WITH THE CLINIC AND THE RESULTS THEREOF; ESTABLISHING ABANDONMENT OR CLOSURE FOR MORE THAN SIXTY (60) DAYS AS GROUNDS FOR REVOCATION OR DENIAL OF A BUSINESS TAX RECEIPT; AMENDING CHAPTER 106 OF THE CITY'S CODE OF ORDINANCES ENTITLED "ZONING" SPECIFICALLY ARTICLE IV - "SPECIAL EXCEPTION USES" BY AMENDING SECTION 106-158, ENTITLED "APPLICATION PROCESS", FURTHER AMENDING SECTION 106-223, ENTITLED "AMOUNT OF OFF-STREET PARKING", FURTHER AMENDING SECTION 106-468, ENTITLED "MASTER BUSINESS LIST", TO PROVIDE FOR PAIN MANAGEMENT CLINICS; AMENDING APPENDIX F "FEES" SECTION 6, ENTITLED "REGULATORY COMPREHENSIVE PLANNING AND ZONING", (7) SPECIAL EXCEPTION USE TO INCLUDE PAIN MANAGEMENT CLINICS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY OF NORTH LAUDERDALE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of North Lauderdale City Commissioners have been advised by the Broward County Sheriff's Office, that a pattern of illegal drug use and distribution has been linked to pain management clinics operating in Broward County; and

**WHEREAS**, the illegal narcotic activity and significant increased crime associated with such clinics has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the City of North Lauderdale citizens; and

**WHEREAS**, the Florida Legislature has identified identical concerns regarding the increased use and frequency of injury and deaths occurring through use of pain management clinics by persons obtaining prescription drugs for improper purposes and enacted the Prescription Drug Monitoring Program and the Prescription Drug Monitoring Act, which requires physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and

**WHEREAS**, the City Commission of the City of North Lauderdale has considered the detrimental effects of the proliferation of “pain clinics” and “pain management clinics” in North Lauderdale and in Broward County, prescription drug abuse, deaths associated with such abuse and crimes stemming from such abuse; and

**WHEREAS**, specifically, on March 23, 2010 the City Commission adopted Ordinance 10-03-1232 imposing a six-month (180 days) moratorium on the issuance of local business tax receipts to pain clinics and pain management clinics and subsequently extended the moratorium on September 23, 2011 by Ordinance 10-09-1241 and March 29, 2011 by Ordinance 11-03-1245; and

**WHEREAS**, the City of North Lauderdale Commissioners have determined that licensing of existing and new businesses operating as pain management clinics within the jurisdiction of the City of North Lauderdale, will provide local oversight of these businesses and hinder illegal activities related to these clinics; and

**WHEREAS**, it is not the intent of this Ordinance to interfere with legitimate medical clinics or the legal use of controlled substances; and

**WHEREAS**, the City of North Lauderdale Commissioners finds and declares a need to impose regulations on pain management clinics and to limit the number of pain management clinics licensed to operate in the City of North Lauderdale.

**NOW, THEREFORE, BE IT ORDAINED BY COMMISSIONERS OF THE CITY OF NORTH LAUDERDALE, FLORIDA:**

**Section 1.** The foregoing “WHEREAS” Clauses are hereby ratified and confirmed as being true and correct, and are hereby incorporated herein and made a part hereof.

**Section 2:** Chapter 86, of the City of North Lauderdale's Code of Ordinances is hereby amended by creating Article VI, Division 1, to be entitled "Pain Management Clinics"

Article VI HEALTH CLINICS

Division 1. PAIN MANAGEMNT CLINICS

**Section 86-191: LEGISLATIVE FINDINGS AND AUTHORITY**

The recitals set forth above are incorporated herein. The City of North Lauderdale Commissioners finds and declares there exists an emergency need to enact an Ordinance requiring the regulation of pain management clinics in the City of North Lauderdale.

This Ordinance is enacted pursuant to Florida Statutes Section 125.66, and under the home rule powers of North Lauderdale and is in the best interest of the health, peace, safety and general welfare of the people of the City of North Lauderdale.

**Section 86-192: PURPOSE AND INTENT**

The purpose and intent of this Ordinance is to promote the health, safety and general welfare of the residents of the City of North Lauderdale through the regulation of certain pain management clinics (as defined below) that may currently be in operation and future pain management clinics and to create a procedure for licensing for any pain management clinics that intend to prescribe or dispense or which are presently prescribing or dispensing any schedule II substances, as defined herein. For purposes of this Ordinance, the terms pain management clinics and pain clinics are used interchangeably.

**Section 86-194: DEFINITIONS.**

- A. **Applicant** means the owner or a person or person(s) authorized by the owner to complete an application for a license to operate a pain management clinic.
- B. **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.
- C. **Code Enforcement Officer** means any employee designated as a code enforcement officer pursuant to Florida Statutes Sections 125.69 or 162.21.
- D. **Department** shall mean the Department designated by the City Manager to administer the mandates of this Ordinance.
- E. **Operating or to operate a Pain Management Clinic** means to conduct the affairs or manage the operations of a Pain Management Clinic including, but not limited to, any one or more of the following:
  - 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 IV, or Schedule V of Florida Statutes Section 893.03 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 the use as a or in connection with a Pain Management Clinics 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.

F. **Pain Management Clinic** means a privately owned pain management clinic, facility, or office which advertises in any medium for any type of pain management services or engages a physician who is primarily engaged in the treatment of pain by prescribing controlled substance medications, and which is required to register pursuant to F.S. (2011) 458.3265 or 459.0137, as amended from time to time. A physician that is primarily engaged in the treatment of pain by prescribing controlled substance medications for the treatment of pain shall also be defined as a pain management clinic. This definition shall not include any clinic or medical practitioner's office that is affiliated with a hospital, hospice or other facility for the treatment of the terminally ill in Broward, Palm Beach or Miami-Dade counties, nor shall it include a pain management clinic or practice which is conducted within a facility licensed under F.S. Ch. 395, or any successor statute. Also included in this definition are centers designating themselves as a pain research center and, which may or may not be required to be registered with the State even though controlled substance medications are dispensed or prescribed to patients. Pain management clinic does not include clinics:

1. Licensed as a facility pursuant to Florida Statutes Chapter 395;
2. Where the majority of the physicians who provide services in the clinic primarily provide surgical services;
3. 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;
4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. That do not prescribe or dispense controlled substances for the treatment of pain; or

6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c)(3) or (4).
- G. License shall mean a certificate issued pursuant to this Ordinance by the Community Development Department, on an annual basis, authorizing the operation of a specific pain management clinic location in the City of North Lauderdale and which contains the State's required registration number on its face, if applicable. Each license shall at a minimum identity 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 license shall have a unique number identification on its face.
- H. Operator means an individual, partnership, corporation, association or other legal entity.
- I. Physician means a physician will be considered primarily engaged in the treatment of pain, by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain.
- J. Schedule II means a substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence and as defined in Section 893.03, Florida Statutes, as amended from time to time. For the purposes of this Article, the following substances are exempted from the definition of Schedule II substances and shall not be counted in the monthly or annual aggregate unit doses: Nabilone, Phenyclidine, 1- Phenylcyclohexylamine, 1- Piperidinocyclohexanecarbonitrile, Amobarbital, Amphetamine, Glutethimide, Methamphetamine, Methylphenidate, Pentobarbital, Phenmetrazine, Phenylacetone, and Secobarbital.

#### **Section 86-195: LICENSE REQUIRED.**

It shall be unlawful for any pain management clinic to prescribe or dispense any scheduled II controlled substance without first obtaining Special Exception Use Permit from the City. In addition to the Special Exception Use Permit, the pain management clinic must also obtain a Local Business Tax Receipt. However, a Special Exception Use Permit must be obtained prior to the issuance of the Local Business Tax Receipt.

#### **Section 86-196: PERMIT AND APPLICATION PROCESS REQUIREMENTS.**

- A. - Any pain management clinic, as defined in Section 86-194 above, must complete an Special Exception Use Permit application available from the Community Development Department which shall at a minimum require the applicant to provide the following information:

1. All the documentation outlined in Article IV Special Exception Uses, Section 106-158 of the City of North Lauderdale code of Ordinances.
2. The registration number from the State Department of Health as required by Florida Statutes Section 458.309 or 459.005, if the clinic must be registered in accordance with state law;
3. 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 under Florida Statutes Chapters 456 or 459 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 Community Development Department of the identity of another designated physician for the clinic or forfeit the clinic's license;
4. A list of all persons associated with the management or operation of the clinic, whether paid or unpaid, part-time or full time, including all contract labor and independent contractors. This list includes, but is not limited, to all owners, operators, employees and volunteers. For persons listed, the following additional information must be provided:
  - A. The person's title;
  - B. A current home address, telephone number and date of birth;
  - C. A list of all criminal convictions whether misdemeanor or felony;
  - D. A copy of a current Florida driver's license or a government issued photo I.D.; and
  - E. A set of fingerprints.
  - F. A list of any and all arrests for an offense that constitutes a felony for receipt, possession, delivery, distribution, selling, manufacturing or purchasing of illicit drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893.03, or any other state, or the United States. This list must include the arrest dates, the location of the alleged crime and the case number(s). If the case has been finalized, the result of the case as to guilty, not guilty, a withhold of adjudication or entry into an intervention program must be provided to Staff. The arrest alone is not grounds for denial or revocation of the Pain Management Clinic License, but failure to disclose and update any portion of the required information within thirty (30) days after the arrest or results is grounds for denial or revocation of a Pain Management Clinic License.
  - G. A list of any and all past disciplinary actions and new disciplinary actions initiated against any physician or other licensed health care practitioners, including the initiation date, location and case number of the disciplinary action and the final result of the disciplinary action. The mere fact that a disciplinary action has been initiated does not alone constitute grounds for

denial or revocation of the Pain Management Clinic License. Failure to fully disclose past disciplinary actions and any new disciplinary actions along with updates throughout the proceedings and the final result within thirty (30) days after receipt of the disciplinary action is grounds for denial or revocation of a Pain Management Clinic License.

5. The property owner's name, address, telephone number and a copy of a Florida driver's license or a government issued photo I.D., if the property owner is different than the clinic owner.
  6. Whether the pain management clinic dispenses controlled substances at the pain management clinic site;
  7. A floor plan of the pain management clinic showing the location and size of the waiting area, location and size of the patient rooms and location of any type of diagnostic equipment. In addition, if any controlled substances are dispensed at the site or are stored at the site and the location and method of security for any controlled substances kept on the clinic's premises.
  8. Any other information the individuals designated in the Community Development Department or any other individuals designated by the City Administration to review applications and issue a Special Exception Use Permit receipts on behalf of the City, deems necessary;
  9. In the event that any information provided in the application changes, a new updated application must be filed with the Community Development Department within ten (10) days of the change.
- B. **Application Fee and Requirements** - Each application for a Special Exception Use permit to operate a pain management clinic shall be accompanied by a nonrefundable application fee in the amount listed in Appendix F of the City of North Lauderdale Fee Schedule. Any changes to the application or license fees authorized by this Ordinance may be accomplished by Resolution of the City of North Lauderdale Commission without the need to revise this Ordinance.

It is the applicant's sole responsibility to provide accurate contact information when submitting the application to the Community Development Department. If the application for a pain management clinic license 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 Community Development Department within fifteen (15) business 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 fifteen (15) 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 license.

- C. The Community Development Department shall perform inspection(s) of the facility as necessary to determine whether or not the application submitted is accurate in all respects

and to verify a physician licensed under Florida Statutes Chapter 456 or 459 is on the premises during all times medications are dispensed or prescribed.

- D. No pain management clinic may operate in the City of North Lauderdale without a valid City of North Lauderdale – Special Exception Use Permit and a Local Business Tax Receipt (as defined herein) as provided in Section 86-195 above. In addition, it shall be a violation of this Ordinance for the property owner where the clinic is situated to allow an unlicensed pain management clinic to open or operate without a valid City of North Lauderdale – Special Exception Use Permit and a Local Business Tax Receipt, as provided in Section 86-195, above.

#### **Section 86-197: GROUNDS FOR DENIAL OF LOCAL BUSINESS TAX RECEIPT OR REVOCATION OF SEU.**

The Community Development Department shall deny a local business tax receipt or revoke an SEU for a pain management clinic upon the occurrence of one or more of the following:

- A. The Special Exception Use Permit is denied by the City's Governing Body;
- B. An application contains material false information or missing information;
- C. The clinic is not registered, if required, with the State in accordance with Florida Statutes Section 458.309 or Section 459.005, or has had its registration suspended or revoked by the State;
- D. Failure to allow for inspection of the clinic at any time by a code enforcement officer, law enforcement officer, or any other person authorized to enforce ordinance violations in the City of North Lauderdale at any time the clinic is open or occupied;
- E. Failure to abide by any provision of this Ordinance;
- F. 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) an offense that constitutes a felony for receipt, possession, delivery, distribution, selling, manufacturing or purchase of illicit drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893.03, or any other state, or the United States;
- G. The facility is owned or operated by any person or has any contractual or employment relationship with a physician or other licensed health care practitioner as defined by Florida Statutes Section 456.001 (4):
  - 1. Whose Drug Enforcement Administration number has ever been revoked;
    - 1. Whose application for a license to prescribe, dispense, supply, sell, give, compound or administer a controlled substance has been denied or revoked by any jurisdiction;
    - 2. Who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) an offense that constitutes a felony for receipt,



possession, delivery, distribution, selling, manufacturing or purchase of illicit drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule UT, Schedule IV, or Schedule V of Florida Statutes 893.03 or any other state, or the United States; or

3. Whose license has been suspended or revoked or has had other action taken as a result of physician or other licensed health care provider's abuse of drugs or alcohol, or from the improper prescribing, dispensing, administering, supplying, selling, giving, mixing, or otherwise preparing any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes 893.03 or any other state, or the United States.
- H. Community Development Department may grant an exception to sub-sections F and G above, if more than ten (10) years have elapsed since the adjudication date.
- I. The fact that an appeal is pending for any items listed in F and G, above, has no effect on Staff's obligation to deny or revoke a pain management clinic license.
- J. If the payment for the SEU application fee or local business tax receipt fee is invalid or uncollectible for any reason.
- K. The owner or operator of a clinic whose local business tax receipt or SEU permit related to the ownership or management of a medical clinic that provided pain management services for chronic non-malignant pain in another jurisdiction has been denied or revoked.
- L. Failure to disclose and update information within thirty (30) days as required by Section 6, Paragraph (A)( 4)(F).
- M. Failure to disclose and update information within thirty (30) days as required by Section 6, Paragraph (A)( 4)(G).

#### **Section 86-198: ADDITIONAL LICENSE COMPLIANCE REQUIREMENTS.**

- A. A valid City of North Lauderdale pain management clinic Local Business Tax Receipt issued pursuant to this Ordinance must be prominently displayed in a common public area of the pain management clinic.
- B. Under the power and rights to zone areas in which Pain Management Clinics operates within the city limits, it is hereby established that a 500 feet as measured by airline measurements from main entrance to main entrance distance separation must be maintained between such business establishment. Furthermore; it is prohibited for any Pain Management Clinic to be located within 500 feet from any permanently established church or school, measured by airline measurement from main entrance to main entrance, except in the case of a school, to the nearest point of the school grounds used as part of the school facilities.

- C. A conceptual site plan showing proposed access parking, a traffic generation or traffic impact analysis, a public facility impact analysis and an economic impact analysis.
- D. A pain management clinic applicant shall provide proof that a minimum of (1) one parking space per every (150) one hundred fifty gross square feet of the clinic space including the customer waiting area, the lobby, and seating area. If the business includes a pharmacy, the pharmacy space shall provide a minimum of (10) one parking space per (200) two hundred gross square feet of the remainder of the building.
- E. Pain management clinics are prohibited from having any outdoor seating areas, queues, or customer waiting areas. All applications must show that all activities of the pain management clinic, including sale, display, preparation and storage shall be conducted entirely within a completely enclosed building.
- F. In the event any information contained in the license application changes, a new updated application must be filed with the Community Development Department within ten (10) days of the change. Failure to do so will result in license revocation and penalty as provided for in Section 86-203, below.
- G. A pain management clinic license is non-transferable and cannot be assigned. Whenever ownership or management of a pain management clinic changes, a new SEU application must be filed for a new license and all applicable fees paid.
- H. A valid Business Tax Receipt must be maintained by the pain management clinic.
- I. Any business tax receipt inspector, code enforcement officer, law enforcement officer, or any other persons authorized to enforce county ordinances must be allowed access for inspections of the clinic premises at any time someone is present.
- J. 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 the City of North Lauderdale license number.
- K. The pain management clinic shall not limit the form of payment for services, prescriptions or drugs to cash only.
- L. The hours of operation of the pain management clinic shall be limited to 9:00 am – 6:00 pm. Monday through Saturday.
- M. Except as provided herein, the clinic must continue operations without a lapse of more than sixty (60) consecutive calendar days or the clinic will be considered abandoned. Any operation lapse exceeding sixty (60) consecutive calendar days shall result in revocation of the license by Staff for abandonment, unless an extension is requested and approved by Staff before the sixty (60) consecutive calendar days lapse. An extension will only be granted by Staff upon "good cause", shown by the clinic. Circumstances in which "good

cause" is shown includes, but is not limited to: extensive clinic renovations or repairs; absence of the responsible medical director for charitable reasons, illness or death, and/or other causes stated in the Hearing Procedure Policy.

#### **Section 86-199: REVIEW OF LICENSE DENIAL OR REVOCATION.**

Community Development Department shall provide written notice of a denial of any new or renewal business tax receipt specifying in writing the grounds for the denial or revocation. The applicant whose application has been denied (except for an incomplete application) may use the appeal process outlined in Chapter 6 entitled Zoning under Article II Administration and Enforcement, Division 3 Variances and Appeals, Section 106-82 Appeals. Any clinic whose business tax receipt is denied, non-renewed (except for an incomplete business tax application), or revoked, shall be subject to all the provisions of this Ordinance and the clinic may not re-apply unless the denial or non-renewal 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 business tax receipt at another clinic for a period of five (5) years, whichever is longer, unless the individual was previously the applicant for that clinic, or unless the denial or non-renewal is solely based on an incomplete application.

#### **Section 86-200: LICENSE RENEWALS.**

Licenses required for pain management clinics shall be valid for only one (1) year. The license must be renewed each year under the requirements to maintain a Local Business Tax Receipt.

#### **Section 86-201: VIOLATION AND INSPECTIONS.**

It shall be unlawful for any person to violate any provision of this Ordinance or to operate a pain management clinic without a valid Special exception Use Permit and a Local Business Tax Receipt.: Any business tax receipt inspector, code enforcement officer, law 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 Ordinance at any time someone is present on the premises.

#### **Section 86-202: REPORTING AND PROCEDURES**

- A. Each Pain Management Clinic shall provide a monthly summary report to the Police Department for all Schedule II substances as defined in Section 86-194 that have been prescribed by the facility. The monthly report shall be provided by the seventh day of each month for the previous month. At a minimum, the report shall include the following:
- a. List of all physicians that have prescribed Schedule II substances, with their business addresses;
  - b. The number of prescriptions written by each physician or physician's office; and

- c. The number of prescriptions associated with each type of Schedule II substances.
- B. Prior to prescribing any Schedule II substances, the licensed physician shall perform a physical examination of a patient on the same day any Schedule II substance is prescribed to said patient. The physical exam shall be performed by the licensed physician and shall not be performed by a nurse or physician's assistant. A written report of the physical examination shall be placed in the patient record;
- C. The physician shall require a valid State or Federal photo identification, or passport, to identify the patient or, in the case of a minor, his/her parent or legal guardian's similar identification, prior to the prescribing of any Schedule II substances;
- D. The physician shall maintain a legible copy of the prescription for Schedule II substances as defined by Section 86-194; the patient's photo identification for each prescription. The records must be maintained for a minimum of two (2) years. Such records shall be available for inspection and copying by the law enforcement agencies, as permitted by law, for a minimum of two (2) years;
  - a. Each prescription must be clearly documented in the patient record. All written prescriptions must include the name, address, substance name, amount prescribed, and detailed instructions; and
- E. The Pain Management Clinic shall establish and submit to the City as part of the pain medication license application written policies and procedures governing the management of pain that are reviewed every year and revised more frequently as needed. The written policies and procedures shall include at least the following:
  - a. A written procedure for systematically conducting periodic assessment of patient's pain;
  - b. Criteria for the assessment of pain, including but not limited to: pain intensity or severity, pain character, pain frequency or pattern, or both; pain location, pain duration, precipitating factors, responses to treatment and the personal, cultural, individual's perception of pain;
  - c. A written procedure for the monitoring of a patient's pain;
  - d. A written procedure to insure the consistency of pain rating scales across the Pain Management Clinic;
  - e. Requirements for documentation of a patient's pain status on the medical record;
  - f. A procedure for educating patients and, if applicable, their families about pain management when identified as part of their treatment;
  - g. A written procedure or systematically coordinating and updating the pain treatment plan of patient in response to documented pain status;
  - h. Whether or not the Pain Management Clinic requires patients to enter into a narcotic medication agreement, and if so, whether the agreement addresses: the risks associated with taking Schedule II substances; requirements for the patient to use one pharmacy to fill all Schedule II prescriptions; a requirement that the patient not utilize illegal or illicit drugs or obtain additional prescriptions for Schedule II substances; a requirement that prescriptions not be transferred, shared, traded or sold; authorization for the Pain Management Clinic to contact other physicians and pharmacies to validate compliance; indicators of patient misuse, abuse or diversion

that may result in non-compliance or violation of the agreement; and the consequences for non-compliance or violation of the agreement including but not limited to patient authorization for referral to law enforcement; and

i. Whether or not the physician requires random drug screening.

G. Each Pain Management Clinic shall develop, revise as necessary and implement a written plan for the purpose of annual training and educating staff on pain management policies and procedures. The plan shall be submitted and reviewed as part of the application for pain medication license. The plan shall include mandatory educational programs that address at least the following:

a. Orientation of new staff to the Pain Management Clinic's policies and procedures on pain management;

b. Training of non-clerical staff on the dangers of prescription drug diversion, the signs of misuse and abuse, and the importance of patient compliance with prescribed regimens;

c. Patient rights; and

d. Implementation of the plan shall include records of attendance of each program for each member of the Pain Management Clinic's staff.

#### **Section 86-203: SERVICE OF NOTICE: PUBLIC RECORDS.**

1. Any notice required by this Ordinance 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 license, except that notices for Code violations shall be provided in the manner prescribed by Florida Statutes Chapter 162. The mailing address set for the in the application shall be considered the correct mailing address.
2. Any information contained in an application under this Ordinance is subject to the public records law, Florida Statutes Chapter 119, unless specifically exempted by law.

#### **Section 86-204: ENFORCEMENT AND PENALTIES.**

The City's business tax receipt inspectors, code enforcement officers, law enforcement or any other person authorized to enforce county ordinances may enforce the provisions of this Ordinance. Any enforcement action or legal remedy available under controlling state law, including, but not limited to, prosecution as a misdemeanor with a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty. When enforced by a code enforcement officer, the enforcement provisions and procedures contained in Florida Statutes Chapter 162, as may be amended, are incorporated herein by reference and will apply. Nothing contained herein shall prevent the City from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:

1. Revoking of the City's Pain Management Clinic Special Exception Use Permit and Local Business Tax Receipts; or
2. Pursuing injunctive or declaratory relief in a court of competent jurisdiction; or

3. Initiating any action to recover any and all damages that may result from a violation of or refusal to comply with any part of this Ordinance; or
4. Utilizing any other action or enforcement method allowable by law.

**Section 86-204: ALLOCATION OF FEES AND FINES.**

Fees - collected pursuant to this Ordinance shall be used exclusively to pay for the City's administrative costs including but not limited to the application process, inspections and enforcement activities. To the extent allowed by state law, the Finance Department, is hereby directed to deposit civil fines collected pursuant to this Ordinance into the General Fund as code violation fines.

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**Section 3.** Chapter 106, Article IV of the City of North Lauderdale's Code of Ordinances is hereby amended by amending Sec. 106-158, entitled "Application Process", as follows:

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Sec. 106-158 Application process.

(12) Applications for special exception use permits for pain management clinic shall be filed in accordance with Sec. 86-196 of the City's Code of Ordinances.

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**Section 4** Chapter 106, Article VI of the City of North Lauderdale's Code of Ordinances is hereby amended by amending Sec. 106-223, entitled "Amount of Off-Street Parking", as follows;

(33) Pain Management Clinics. All pain management clinics shall provide a minimum of (1) one parking space per every (150) one hundred fifty gross square feet of the clinic space including the customer waiting area, the lobby, and seating area. If the business includes a pharmacy, the pharmacy space shall provide a minimum of (10) one parking space per (200) two hundred gross square feet of the remainder of the building.

**Section 5.** Chapter 106, Article XV of the City of North Lauderdale's Code of Ordinances is hereby amended by amending Sec. 106-468, entitled "Master Business List", as follows"

| Business List                          | Prohibited | B-1<br>Neighborhood | B-2<br>Commercial | B-3<br>Commercial | B-4<br>Commercial |
|--|------------|---------------------|-------------------|-------------------|-------------------|
| <u>Pain<br/>Management<br/>Clinics</u> |            |                     | <u>*7</u>         | <u>*7</u>         |                   |

**Section 6.** Appendix F, Section 6 Regulatory, Comprehensive Planning and Zoning is hereby amended by adding a fee for Pain Management Clinics as follows:

*(7) Special Exception Use, per exception..... \$550*

d. Pain Management Clinics/Pain Clinics .....\$1,500

**Section 7.** All Ordinances or parts of Ordinances and all resolutions or parts of Resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 8.** If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

**Section 9.** This Ordinance shall be effective upon its passage and adoption by the City Commission of the City of North Lauderdale.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF NORTH LAUDERDALE, FLORIDA, ON THE FIRST READING, THIS 13th DAY OF MARCH, 2012.**

**PASSED ADOPTED BY THE CITY COMMISSION OF THE CITY OF NORTH LAUDERDALE, FLORIDA, ON THE SECOND AND FINAL READING, THIS 28 DAY OF MARCH, 2012.**

APPROVED AS TO FORM:

*Samuel S. Goren*  
SAMUEL S. GOREN, CITY ATTORNEY

*Jack Brady*  
MAYOR JACK BRADY

*David G. Hilton*  
VICE MAYOR DAVID G. HILTON

ATTEST:

*Patricia Vancheri*  
CITY CLERK PATRICIA VANCHERI

