

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, REPEALING THE ZONING IN PROGRESS ADOPTED BY ORDINANCE NO. 12-35; AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED ZONING BY AMENDING SECTION 122-418 "CONDITIONAL USES" IN THE GENERAL COMMERCIAL (CG) ZONING DISTRICT TO PROVIDE FOR PAIN MANAGEMENT CLINICS AS A CONDITIONAL USE; BY CREATING DIVISION 14 ENTITLED "PAIN MANAGEMENT CLINICS"; BY ADDING SECTIONS 122-1547 THROUGH AND INCLUDING 122-1553, TO ALLOW AND REGISTER PAIN MANAGEMENT CLINICS AS DEFINED; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Key West City Commission directed City staff to review existing Land Development Regulations (LDRs) to determine whether there was a need to adopt criteria permitting and regulating the location of Pain Management Clinics within the City of Key West; and

WHEREAS, the City Planner began documenting efforts concerning the subject on at least March 5, 2012; and

WHEREAS, on December 5, 2012 the City Commission adopted Ordinance No. 12-35 to implement a Zoning in Progress to prevent the issuance of any new business tax receipts for Pain Management Clinics; and

WHEREAS, the State of Florida has implemented a Prescription Drug Monitoring Program (PDMP) throughout the state and in Key West to be an effective tool to reduce successful doctor shopping, multiple prescriptions, and multiple fillings of pharmacy

prescriptions and dispensing of potentially dangerous opiate drugs requiring local physicians to carefully check the state database before prescribing potentially dangerous opiate drugs; and

WHEREAS, other counties and municipalities have enacted moratoria on the issuance of business tax receipts or other licenses, and subsequently created ordinances to regulate the operation of Pain Management Clinics or pharmacies to prevent the dispensing of excessive amounts of controlled substances; and

WHEREAS, the City Commission, accepting the recommendation of the Planning Board, deems it in the best interests of the residents of Key West to enact an ordinance regulating Pain Management Clinics and their impact on the community; and

WHEREAS, the Planning Board reviewed existing LDRs and determined there is a need to adopt criteria permitting and regulating the location of Pain Management Clinics within the City of Key West and the reporting of their operations to the appropriate local, state and federal authority; and

WHEREAS, it is not the intention of this ordinance to interfere with the legal prescription, dispensation, or use of controlled substances; and

WHEREAS, at its meeting of April 18, 2013, the Planning Board recommended adoption of this ordinance, including the repeal of the Zoning in Progress implemented in Ordinance No. 2012-35, and approval of substantive land use and zoning regulations contained herein on the establishment of Pain Management Clinics in the City of Key West; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA,
AS FOLLOWS:

Section 1: Repeal of Zoning in Progress (ZIP). The ZIP ordinance against Pain Management Clinics implemented by Ordinance No. 2012-35 is hereby repealed.

Section 2: That section 122-418 of the code of ordinances is hereby amended as follows*:

Sec. 122-418. - Conditional uses.

Conditional uses in the general commercial district (CG) are as follows:

(1) Single-family/two-family residential dwellings.

* * * * *

(22) Pain Management Clinics (see Division 14 of Article V)

Section 3: That Section 122-1547 of the Code of Ordinances is hereby created as follows:

Sec. 122-1547. Pain management clinics – Purpose

The purpose of this ordinance is to regulate Pain Management Clinics for the health, safety, and welfare of the citizens, residents, and businesses of the City of Key West; and to establish reasonable regulations for Pain Management Clinics to be located in Key West.

The State of Florida has implemented a Prescription Drug Monitoring Program (PDMP) throughout the state and in Key West to be an effective tool to reduce successful doctor shopping, multiple prescriptions, and multiple fillings of pharmacy prescriptions and dispensing of potentially dangerous opiate drugs requiring local physicians to carefully check the state database before prescribing potentially dangerous opiate drugs.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Section 4: That Section 122-1548 of the Code of Ordinances is hereby created as follows:

Sec. 122-1548. **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:

Acute Pain is the normal, predicted physiological response to an adverse chemical, thermal or mechanical stimulus and is associated with surgery, trauma, or illness. It is generally short-lived. Acute pain responses may vary between patients and between pain episodes within an individual patient. Acute pain episodes may be present in patients with chronic pain.

Chronic pain means pain, which includes one or more of the following characteristics: (a) the pain persists beyond the usual course of a disease that is the cause of the pain; (b) the pain persists beyond the expected time for healing from an injury or trauma that is the cause of the pain; and (c) the pain is associated with a long-term incurable or intractable medical illness or disease and is not amenable to routine pain control methods.

Controlled Substance means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in Section 893-03, Fla. Stat. recognized as effective for pain relief such as, but not limited to, Buprenorphine, Butorphenol, Codeine, Hydrocodone, Hydromorphone, Levorphanol, Methadone, Morphine, Oxycodone, Propoxyphene, and Fentanyl.

Health Care Physician or Physician means any practitioner who is subject to licensure or regulation by the Florida Department of Health under Chapters 458 (physician) or 459 (osteopathic physician) of the Florida Statutes.

Pain means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Categories of pain include acute pain or chronic pain.

Pain Management means the use of pharmacological and non-pharmacological interventions to control the patient's identified pain. Pain management often extends beyond pain relief, encompassing the patient's quality of life, ability to work productively, to enjoy recreation, and to function normally in family and society.

Pain Management clinic and/or pain clinic means a privately owned Pain Management Clinic, facility or office, whatever its title, including but not limited to a "wellness center," "urgent care facility," or "detox center," which engages in pain management and holds itself out as providing, or advertises in any medium as providing, any type of pain management services and that the primary business purpose of such clinic, medical office, or practitioners' office is to prescribe or dispense pain medication including, but not limited to, opioids, including Fentanyl, Hydrocodone, Morphine, and Oxycodone, to individuals for payment by cash, check or charge; and includes an entity that employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and is required to register with the Florida Department of Health pursuant to §458.309(4) or §459.005(3), Fla. Stat. (2009), or any successor state law.

In determining whether a clinic, medical facility, practitioner's office, or pharmacy is a pain clinic or Pain Management Clinic, the City Manager may also consider the following: whether it employs one or more physicians licensed under Chapter 458 or 459, Florida Statutes, who, in a single day, issues in excess of twenty-five (25) prescriptions for controlled substances

for the treatment of pain; whether major medical insurance is accepted; whether the owner/operator is a physician; whether the medical director is Board Certified in pain medicine and; whether the owner/operator has been convicted of or has pled guilty or nolo contendere to an offense that constitutes a felony or a misdemeanor.

Permit shall mean a certificate issued by the City of Key West acknowledging the submission and accurate completion of the Pain Management Clinic registration forms required in order to conduct business in the City of Key West as a Pain Management Clinic.

Pharmacy shall mean the same as that term is defined in Section 465.003, Fla. Stat., as may be amended from time to time, and includes community pharmacy, internet pharmacy, and special pharmacy, but does not include institutional pharmacy or nuclear pharmacy, as each of those terms are used in that section.

Pill Mill is a an entity employing a doctor, clinic, or pharmacy that is prescribing or dispensing controlled substances inappropriately, unlawfully, or for nonmedical reasons. Its operations and practices do not comply with the requirements of federal law, Florida Statutes and regulations, or this Article.

Surgical Services shall mean the practice that deals with the diagnosis and treatment of oral health, injury, deformity, and disease in which part of the body is entered by puncture or incision and treatment takes place through manual and instrumental means. This includes interventional pain management procedures such as spinal injections, spinal cord stimulators, intrathecal pumps, and similar procedures.

Section 5: That Section 122-1548 of the Code of Ordinances is hereby created as follows:

Sec. 122-1549.

General Regulations.

(a) The purpose of this section is to limit the number of Pain Management Clinics within the corporate boundaries of Key West in order to address their adverse secondary effects.

(b) A physician shall be designated as responsible for complying with all requirements related to operation of the Pain Management Clinic. The designated physician, and all other persons operating the Pain Management Clinic, shall ensure compliance with the following regulations. Failure to so comply shall be deemed a violation of this ordinance and shall be punishable as provided in section 122-1553.

(c) All licensed Pain Management Clinics shall be subject to the supplemental regulations provided in this subsection.

(d) Prescription Drug Monitoring Program (PDMP): all physicians licensed under Chapters 458 and 459, Fla. Stat., shall, prior to the prescribing of a controlled substance, request a "Patient Advisory Report" from the PDMP, review its contents, and shall document same by placing a printout of the report in each patient's file. A copy of that printout shall be made available for inspection by law enforcement officers or code enforcement officers.

(e) All new Pain Management Clinics shall be subject to a review coordinated with the Key West Police Department. The Police Department shall provide a written confirmation to the Planning Department that it has reviewed the Conditional Use application.

(f) Any Pain Management Clinic shall be validly registered with the State of Florida, if required, and with the City, and shall prominently display in a public area near its main entrance copies of all state licenses, Monroe County license, and City Business Tax Receipt, and the name of the owner and designated physician responsible for compliance with state and City law.

(g) A Pain Management Clinic may operate only Monday through Friday and only during the hours of 7:00 am to 7:00 pm unless surgical procedures are being performed.

(h) For the purpose of studying the patterns of health and illness and prescriptions issued within the City of Key West, and to verify that a Pain Management Clinic is operating in compliance with the requirements of Federal law, Florida Statutes, and this Article, Pain Management Clinics shall make and maintain monthly operational records for a period of two (2) years. Operational records shall consist of a monthly register of the following information for the previous calendar month:

1. The total number of prescriptions written for controlled substances listed separately by each physician;
2. The total number of persons seen by the Pain Management Clinic;
3. The state of residence of each person to whom controlled substances were prescribed or dispensed;
4. A log of all attempts, whether successful or unsuccessful, to access and review the state-maintained Prescription Drug Monitoring Program.

Copies of this monthly register shall be made available to any law enforcement and/or code compliance officer upon demand.

(i) Pain Management Clinics shall maintain personnel records for all owners, operators, employees, and volunteers on site for each Pain Management Clinic, and make them available during any inspection. Personnel records shall, at a minimum, contain the following information: (a) the person's full name and title; (b) current home address, telephone number, and date of birth; (c) a list of all criminal convictions whether misdemeanor or felony; and (d) a copy of a current driver's license or a government issued photo identification.

(j) A Pain Management Clinic shall at all times be in compliance with all federal and state laws and regulation and the Key West Code.

Section 6: That Section 122-1549 of the Code of Ordinances is hereby created as follows:

Sec. 122-1550. Requirements for new Pain Management Clinics

Notwithstanding any other provision of the Code of Ordinances that allow medical clinics, doctor's offices, or pharmacies as a permitted use in any other zoning district, Pain Management Clinics, as defined in section 122-1548, in existence prior to the effective date of the Zoning in Progress established by Ordinance 12-35, shall be deemed to have a valid Conditional Use approval as required by section 122-61. The establishment of any new Pain Management Clinic use shall require a conditional use approval, and may be established only within the Commercial General (CG) zoning district, and shall be prohibited as a home occupation. Following the granting of a Conditional Use approval as required by this Division and its satisfaction of sections 122-61 through 122-65, any new Pain Management Clinic applicant shall complete the appropriate building permit or Business Tax Receipt and submit these application(s) to the City Building Division for review and approval prior to issuance of any permits.

Section 7: That Section 122-1551 of the Code of Ordinances is hereby created as follows:

Sec. 122-1551. Separation requirements.

(a) The proposed site of a Pain Management Clinic shall be at least 500 feet from any other Pain Management Clinic.

(b) The proposed Pain Management Clinic shall be at least 500 feet from the nearest house of worship, school (public or private), pharmacy, and child care center.

(c) A Pain Management Clinic shall not co-locate on the same property as a preexisting pharmacy, nor shall a Pain Management Clinic be allowed to co-locate on the same parcel as a proposed pharmacy, nor shall a Pain Management Clinic be allowed within 500 feet of a proposed pharmacy.

(d) The separation requirements set forth above shall be measured by following the shortest route of ordinary fare from the nearest point of the parcel of the proposed Pain Management Clinic to the other parcel (as listed above) in subsections (a) and (b).

Section 8: That Section 122-1550 of the Code of Ordinances is hereby created as follows:

Sec. 122-1552. Licensing.

(a) All city licensing approvals shall be provided to an owner of a Pain Management Clinic no later than 45 days from the date of the submittal of a complete application for a business tax receipt and the applicant's compliance with all building codes following the effective date of Conditional Use approval.

(b) In addition to the business tax set forth in section 66-109(1), the owner of a Pain Management Clinic shall pay to the city, on or before each October 1, an annual fee of \$2,000.00 to defray the expense of regulation.

Section 9: That Section 122-1552 of the Code of Ordinances is hereby created as follows:

Sec. 122-1553.

Penalty.

Violations of this article shall be subject to prosecution and fine under the civil citation procedures of sections 2-676 through 2-680, or section 1-15 of the Key West Code.

Section 10: This Ordinance shall be transmitted by the Director of the Planning Department to the State Land Planning Agency pursuant to Chapter 163 and 380, (F.S.).

Section 11: This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall not become effective until a notice is issued by the State Land Planning Agency or Administration Commission finding the amendment is in compliance with Chapter 163, (F.S.), and after any applicable appeal periods have expired.

Section 12: The numbering of the forgoing amendment may be renumbered to conform to the numbering of the City of Key West Comprehensive Plan and shall be incorporated in the City of Key West Comprehensive Plan.

Section 13: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 14: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2013.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2013.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2013.

Filed with the Clerk _____, 2013.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK