

ORDINANCE NO. 2010-14-222

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES TO PROHIBIT PAIN MANAGEMENT CLINICS FROM DISPENSING DRUGS ON-SITE; AMENDING SECTION 9-20 OF ORDINANCE NO. 2010-10-218 OF THE LAND DEVELOPMENT REGULATIONS ("LDRS") TO PROHIBIT ON-SITE DISPENSING OF CONTROLLED SUBSTANCES AT MEDICAL OFFICES; AMENDING SECTION 10-30(DD) OF THE LDRS TO PROHIBIT MOBILE PAIN MANAGEMENT CLINICS; AMENDING APPENDIX "A" MASTER USE LIST AND USE DEFINITIONS OF THE LDRS TO INCLUDE DEFINITIONS FOR "PAIN MANAGEMENT CLINICS"; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 12, 2010, the City Council enacted a moratorium on "pain clinics" within the City of Miami Gardens, and

WHEREAS, the City Council directed Staff to study the nature and scope of regulating "pain clinics" and "pain management clinics" and businesses involved in the dispensing of narcotic drugs, and

WHEREAS, the Miami Gardens Police Department has observed suspected drug sales, and other criminal activity on or around the property of a pain clinic in the City, and

WHEREAS, according to a recent TIME Magazine article, prescription drug use in Florida rose from 2,780 in 2006 to 3,317 in 2007, and then to 3,750 in 2008, the last figure is equivalent to about 10 reported deaths a day, more than the number of fatalities from street drugs like cocaine and heroin, and

WHEREAS, the illegal sale, use and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City of Miami Gardens, and

WHEREAS, increased criminal activity and other secondary effects including parking, noise, loitering and littering associated with the narcotic-related activities at pain management clinics, is significant and threatens to undermine the economic health of the City's development and redevelopment efforts, and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services, and

WHEREAS, this Ordinance is not intended to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. DEFINITIONS: For purposes of this Section, "*pain management clinics*" or "*pain clinics*" shall be defined as:

1. Any clinic, medical office or medical practitioner's office that is not affiliated with a hospital, hospice or other facility for treatment of terminally ill; and
2. One of the primary business purposes of such clinic, medical office or medical practitioner's office is to prescribe or dispense pain medication, identified in Schedules II, III, IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes, to individuals, or
3. The clinic, medical office or medical practitioner's office advertises as being in business to prescribe pain medication, as defined above in subparagraph 2, and which may or may not provide dispensing of pain medication on site.

Section 3. PROHIBITION: Pain management clinics are prohibited from on-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, in medical offices, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

- (1) A health care practitioner administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- (2) A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care at a hospital, nursing facility, institution or asylum, ambulatory surgical center, or hospice which is licensed in this state.
- (3) A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care at an intermediate care facility for the developmentally disabled which is licensed in this state.
- (4) A health care practitioner administering a controlled substance in the emergency room of a licensed hospital.
- (5) A health care practitioner dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

Section 4. AMENDMENT: Section 9-20 of Ordinance No. 2010-10-218

is hereby amended as follows:

(FF) Office - medical office/medical clinic. On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

(1) A health care practitioner administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(2) A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care at a hospital, nursing facility, institution or asylum, ambulatory surgical center, or hospice which is licensed in this state.

(3) A pharmacist or health care practitioner administering a controlled substance to a patient or resident receiving care at an intermediate care facility for the developmentally disabled which is licensed in this state.

(4) A health care practitioner administering a controlled substance in the emergency room of a licensed hospital.

(5) A health care practitioner dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(GG) Pharmacy, drug store. Shall not be permitted to be located within the same establishment or building as any medical office or clinic, or as any medical or dental laboratory which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time. These supplemental regulations are not to be interpreted to limit the lawful operation of a hospital or institution or asylum separately defined and permitted in zoning districts according to separate regulations.

SECTION 5. RELETTERING: Paragraphs FF through PP of Section 9-20 of Ordinance No. 2010-10-218, as amended, are hereby relettered.

SECTION 6. AMENDMENT: Section 10-30(DD) of Ordinance No. 2010-10-218 is hereby amended as follows:

(DD) Mobile medical, professional unit. Mobile medical facilities or other self contained facilities that travel to several locations, are at the location for a period greater than twenty-four (24) hours, and provide medical or other professional services shall be required:

- (1) Special permit. Receive a special permit that is renewed annually.
- (2) Site plan. Provide a site plan for all locations indicating where the unit shall be placed on the site; and,
- (3) Visitation. Specify length of time and frequency of visits to the various locations. The unit shall be on each site no longer than thirty (30) days from the date permit is issued. Units shall visit the site no more than six (6) times a year.
- (4) Mobile pain management clinics, as herein defined, shall be prohibited.

Section 7. AMENDMENT: Appendix "A" Master Use List and Use Definitions of Ordinance No. 2010-10-218 is hereby amended as follows:

Office medical office/medical clinic	Chiropradists. Chiropractors. Christian Science practitioners. Cosmetic procedures and surgery Dentists. Dieticians. Medical clinics by appointment with and without laboratory and other incidental medical services. Midwives. Naturopaths. Nurses, registered and practical.	An establishment where patients are examined, treated or both on an individual basis by physicians, chiropractors, dentists, osteopaths, optometrists, acupuncturists, and other health practitioners who are duly licensed to practice their respective professions in the State of Florida. Does not include personal service establishments or places for treatment of animals, nor does it entail
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	<p>Nutritionists. Occupational therapists. Optometrists. Osteopathic. Outpatient clinics. Rehabilitation centers. Physicians and surgeons. Physiotherapists. Podiatrists. Psychiatrists. Psychoanalysts. Psychologists. Psychotherapists. Urgent care centers Visiting nurse association. Walk in clinics with and without laboratory and other incidental medical services.</p>	<p>overnight patient stays. The offices of psychologists, social workers and mental health counselors are not medical offices. (See business and professional office). <u>Shall not include pain management clinics, as herein defined.</u> <i>Rehabilitation centers.</i> A type of medical office established to aid persons affected by excessive or illegal use of drugs, narcotics or other hallucinatory substances, not including alcohol, who have developed a dependency on such substances, including but not limited to methadone maintenance facilities, and outpatient rehabilitation facilities.</p>
<p><u>Pain Clinic and Pain Management Clinic.</u></p>		<p>1. <u>Any clinic, medical office or medical practitioner's office that is not affiliated with a hospital, hospice or other facility for treatment of terminally ill; and</u></p> <p>2. <u>One of the primary business purposes of such clinic, medical office or medical practitioner's office is to prescribe or dispense pain medication, identified in Schedules II, III, IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes, to individuals,</u></p>

		<p><u>or</u></p> <p><u>3. The clinic, medical office or medical practitioner's office advertises as being in business to prescribe pain medication, as defined above in subparagraph 2, and which may or may not provide dispensing of pain medication on site.</u></p>
Personal care services	<p>Barber shop. Hair saloon Nails saloon Jewelry repair Petting sitting service Tailors. Shoe repair Licensed massage therapy Personal training (fitness) studios Spa/wellness centers. Drycleaning.</p>	<p>A business primarily engaged in providing individual services on the premises involving the care of a person or their apparel, jewelry and other items worn on one's person. Astrologists and other fortune telling activities, medical services, and mortuaries and related businesses shall not be considered personal service establishments. <u>Shall not include pain management clinics, as herein defined.</u></p>

Section 8. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 9. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 10. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

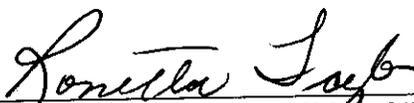
Section 11. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 26th DAY OF MAY, 2010.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 9TH DAY OF JUNE, 2010.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA K. DICKENS, CITY ATTORNEY

SPONSORED BY: COUNCILMAN OLIVER GILBERT III

Moved by: Councilman Gilbert
Second by: Vice Mayor Campbell

VOTE: 6-0

Mayor Shirley Gibson	<u> X </u> (Yes) <u> </u> (No)
Vice Mayor Aaron Campbell	<u> X </u> (Yes) <u> </u> (No)
Councilman Melvin L. Bratton	<u> </u> (Yes) <u> </u> (No)(not present)
Councilman Oliver Gilbert III	<u> X </u> (Yes) <u> </u> (No)
Councilman Andre' Williams	<u> X </u> (Yes) <u> </u> (No)
Councilwoman Sharon Pritchett	<u> X </u> (Yes) <u> </u> (No)
Councilwoman Barbara Watson	<u> X </u> (Yes) <u> </u> (No)



City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	<i>June 9, 2010</i>		Item Type:	Resolution	Ordinance		Other
			<i>(Enter X in box)</i>		X		
Fiscal Impact: <i>(Enter X in box)</i>	Yes	No	Ordinance Reading: <i>(Enter X in box)</i>	1st Reading		2nd Reading	
		X		Public Hearing: <i>(Enter X in box)</i>	Yes	No	Yes
Funding Source:	N/A		Advertising Requirement:	Yes		No	
				X			
Contract/P.O. Required: <i>(Enter X in box)</i>	Yes	No	RFP/RFQ/Bid #:	N/A			
		X					
Sponsor Name	Councilman Oliver G. Gilbert III		Department:	Mayor and City Council			

Short Title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING THE CITY'S CODE OF ORDINANCES TO PROHIBIT PAIN MANAGEMENT CLINICS FROM DISPENSING DRUGS ON-SITE; AMENDING SECTION 9-20 OF ORDINANCE NO. 2010-10-218 OF THE LAND DEVELOPMENT REGULATIONS ("LDRS"), TO PROHIBIT ON-SITE DISPENSING OF CONTROLLED SUBSTANCES AT MEDICAL OFFICES; AMENDING SECTION 10-30(DD) OF THE LDRS TO PROHIBIT MOBILE PAIN MANAGEMENT CLINICS; AMENDING APPENDIX "A" MASTER USE LIST AND USE DEFINITIONS OF THE LDRS TO INCLUDE DEFINITIONS FOR "PAIN MANAGEMENT CLINICS"; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

Summary:

Councilman Gilbert is recommending that the City adopt an Ordinance to prohibit "pain management clinics." Medical offices and pharmacies are permitted in various zoning areas throughout the City. While the normal operations and expectations of a medical office use include examination by doctors, if prescriptions are required, they are normally written on-site, and filled off-site at a pharmacy. However, pain management clinics provide prescriptions, and fill prescriptions on-site. While some pain management clinics operate for legitimate purposes, there is a pattern of abuse, which includes

**ITEM I-1) ORDINANCE
SECOND READING/PUBLIC HEARING
Pain Management Clinics**

illegal sale, use, and delivery of narcotics when they are dispensed on site that can be associated with some pain management clinics. Increased criminal activity and other secondary effects including loitering can occur at pain clinics. The Miami Gardens Police Department has observed dispensing of drugs, sales and other criminal activities on or around a property where a pain clinic was located in the City. This type of activity threatens to undermine the economic health of the City's development and redevelopment efforts, as well as our efforts to control crime.

According to a recent Time Magazine article, prescription drug use in Florida rose from 2,780 in 2006 to 3,317 in 2007, and then to 3,750 in 2008. This last figure is equivalent to ten (10) reported deaths a day, more than the number of fatalities from street drugs such as cocaine and heroin.

According to a recent Broward County Grand Jury Report entitled "The Proliferation of Pain Clinics in South Florida" (available at the desk of Mayor and Council Staff), pain clinics dispense nine million doses of OxyContin every six months throughout South Florida. Many patients engage in "doctor shopping" by obtaining and filling prescriptions at various clinics within a matter of hours. Although the State Legislature has authorized a prescription-monitoring database to prevent doctor shopping, it has not been implemented. Many pain clinics only accept cash payments, which keeps them under the radar from the Florida Board of Medicine (BOM) and the Agency for Healthcare Administration (ACHA). In fact, patients travel to South Florida from as far as Tennessee and Kentucky to obtain prescription narcotics. This Ordinance does not interfere with the legitimate medical use of controlled substances, it does however, prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law.

Proposed Action:

Councilman Oliver Gilbert recommends that the City Council approve this Ordinance.

Attachment:

None