

SUNRISE, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SUNRISE, FLORIDA, AMENDING CHAPTER 7 "LOCAL BUSINESS TAX; LOCAL BUSINESS TAX RECEIPTS, AND BUSINESS REGULATIONS;" CREATING ARTICLE X "PAIN MEDICATION LICENSING PROCEDURE;" CREATING SECTION 7-301 "PURPOSE AND DEFINITIONS;" SECTION 7-302 "PAIN MEDICATION LICENSING PROCEDURE;" SECTION 7-303 "APPLICATION AND REVIEW PROCEDURES FOR PAIN MEDICATION LICENSES;" SECTION 7-304 "REVIEW CRITERIA FOR PAIN MEDICATION LICENSES;" SECTION 7-305 "MANDATORY CONDITIONS FOR PAIN MEDICATION LICENSES;" AND SECTION 7-306 "ISSUANCE, REVOCATION, AND RENEWAL OF PAIN MEDICATION LICENSE;" EXTENDING THE PAIN CLINIC MORATORIUM AND PHARMACY MORATORIUM CREATED BY ORDINANCE 512, AS AMENDED, THROUGH DECEMBER 31, 2011; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Sunrise is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the public health, safety and welfare is a legitimate public purpose recognized by the courts of Florida; and

WHEREAS, the City Commission has ~~recently~~ been made aware by law enforcement and news reports that a pattern of illegal prescription drug substance use, diversion and distribution of oxycodone, oxycontin and other schedule II prescription narcotic drugs resulting

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in deaths associated with such abuse and criminal activity that have ~~as~~

been associated with pain management clinics and pharmacies; and

WHEREAS, many municipalities within Broward County have experienced an influx of pain management clinics; and

WHEREAS, the City Commission has been made aware by law enforcement of the significant amount of schedule II substances that are obtained from pain management clinics and pharmacies in Broward County and distributed out of the State of Florida; and

WHEREAS, the City Commission finds it in the best interest of the citizens of Sunrise to mitigate the negative effects of these businesses by adopting appropriate regulations relating thereto; and

WHEREAS, on May 11, 2010, the City Commission approved Ordinance 512 authorizing a one year moratorium on the issuance of business tax receipts for the operation of pain management clinics, in order to research the nature and scope of possible measures to mitigation and regulation of pain management clinics and pharmacies involved in the dispensing of prescription substances; and

WHEREAS, on November 9, 2010, the City Commission approved Ordinance 512-10-A amending the pain clinic moratorium; and

WHEREAS, on April 26, 2011, the City Commission approved Resolution 11-61 extending the pain clinic moratorium for an additional 180 days; and

WHEREAS, on December 14, 2010, the City Commission approved Ordinance 512-10-B authorizing a one year moratorium on the issuance of business tax receipts for the operation of pharmacies, in order to research the nature and scope of possible measures to mitigate and regulate pharmacies ~~PHARMACIES~~ involved in the dispensing of prescription substances; and

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WHEREAS, on March 8, 2011, the City Commission approved Ordinance 512-11-A amending the pharmacy moratorium; and

WHEREAS, the state and federal laws have not done enough to curb the proliferation of pain management clinics and pharmacies that do not follow the medical standard of care; and

WHEREAS, based on all of the foregoing, the City Commission deems it necessary and in the best interest of the City to enact an ordinance regulating such businesses and further desires to extend the pain clinic and pharmacy moratoriums to coincide with the effective date of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SUNRISE, FLORIDA:

Section 1. The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. That Chapter 7 of the Code of the City of Sunrise, Florida, is hereby amended by adding **Article X "Pain Medication Licensing Procedure."**

Section 3. That the Code of the City of Sunrise, Florida, is hereby amended by changing Chapter 7 "Local Business Tax Receipts, and Business Regulations," Article X "Reserved" to read Article X "Pain Medication Licensing Procedure" and creating sections 7-301, 7-302, 7-303, 7-304, 7-305 and 7-306 to read as follows:

Sec. 7-301. Purpose and definitions.

(a) Purpose and intent. The purpose and intent of this Article is to create a procedure for licensing for any pain management clinics or pharmacies that intend to prescribe or dispense or which are

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presently prescribing or dispensing any ~~schedule I or~~ schedule II substances, as defined herein.

(b) Definitions. For the purpose of this Article the following definitions shall apply:

Operator: A person who engages or participates in any activity that is necessary to or that facilitates the operation of an establishment that is a pharmacy or pain management clinic.

Pain management clinic: 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 or dispensing controlled substance medications, and which is required to register pursuant to Sections 458.3265 or Section 459.0137, Florida Statutes (2010), as amended from time to time. A physician that is primarily engaged in the treatment of pain by prescribing or dispensing 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 Chapter 395, Florida Statutes, or any successor statute.

Pharmacy: A facility, office, building, or other establishment which engages in the dispensing of prescription substances. An exempt pharmacy shall not be required to obtain a pain medication license. The definition shall not apply if:

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Exempt Pharmacy: A facility, office, building, or other establishment which engages in the dispensing of prescription substances and which meets one of the following criteria:

- (1) The facility, office, or building is located in an establishment where physicians provide surgical services;
- (2) The facility, office, or building is owned or leased by a publicly held corporation whose shares are traded on a national exchange and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;
- (3) The facility, office, or building is affiliated with an accredited medical school where training is provided for medical students, medical residents, or fellows;
- ~~(4) The facility, office, or building does not prescribe or dispense controlled substances for the treatment of pain;~~
- (45) The facility, office, or building is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c) (3);
- (56) The facility, office, or building is licensed as a facility pursuant to Chapter 395, Florida Statutes;
- (67) The facility, office, or building is owned or operated by a public agency; or
- (78) The facility, office, building, or pharmacist:
 - a. Does not purchase, store or dispense more than **an aggregate of** five thousand (5,000) unit doses of ~~schedule I or~~ schedule II substances **as defined in Section 7-301** on a monthly basis. **The pharmacy may exceed the monthly aggregate by up to ten (10%)**

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percent provided the pharmacy's annual aggregate of schedule II substances does not exceed sixty thousand (60,000) unit doses; and

b. Has ~~no~~^{The} principals, officers and/or pharmacists ~~of the facility, office, or building~~ have no with criminal convictions under Florida Statutes Chapter 893 within the last ten (10) years; and

c. Executes an Agreement for Pain Medication License Exemption in substantially the format attached hereto as Figure X-1 that will result in the revocation of the Local Business Tax Receipt and inability to apply for any Local Business Tax Receipt within the City for the next twenty-four (24) months upon determination by the City Manager or his/her designee based on the recommendation of the Police Chief of any violation of the Agreement; and

d. Files a monthly affidavit by the seventh day of each month for the previous month with the Police Chief identifying the types and quantities of ~~schedule I~~ and schedule II substances as defined in Section 7-301:

(i) That were purchased during the reporting period, and

(ii) That were sold during the reporting period.

(iii) That were stored during the reporting period.

e. The owners and operator of the facility, office, or building have not had a pain medication license suspended,

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revoked, non-renewed or denied in the previous twenty-four
(24) months.

(8) The facility, office, building or pharmacist is located
within a retail store that has a minimum of 40,000 square feet of
retail and that maintains more than 20 locations within the State of
Florida.

~~Schedule I: A substance that has a high potential for abuse and
has no currently accepted medical use in treatment in the United States
and in its use under medical supervision does not meet accepted safety
standards and as defined in Section 893.03, Florida Statutes, as
amended from time to time.~~

Schedule II: 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.**

Sec. 7-302. Pain medication licensing procedure.

(a) License required. It shall be unlawful for any pain
management clinic or pharmacy to prescribe or dispense any ~~schedule I~~
~~or~~ schedule II controlled substance without first obtaining a pain
medication license from the City of Sunrise.

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(b) Pain medication licensing procedure. Any pain management clinic or pharmacy holding a license duly granted by the State of Florida to prescribe or dispense ~~schedule I or~~ schedule II controlled substances may apply for a pain medication license. Such application shall be processed using the procedures and criteria listed in this Article. In the event that such an establishment is under contract for sale, the current owner and the potential future owner, under contract, must submit a joint application for a pain medication license. The fee for the issuance of the pain medication license shall be the same as for a new license and shall be paid prior to issuance of the license. A pain medication license granted to a duly licensed establishment shall allow the pain management clinic or pharmacy to lawfully prescribe and/or dispense ~~schedule I and~~ schedule II substances within the City of Sunrise. Pain medication licenses are hereby deemed to be a privilege granted by the city commission, and are declared to be and are regulatory in nature, and revocable pursuant to the procedures set forth in this chapter.

(c) Revocation of existing pain medication licenses and approvals, and establishment of pain medication licensing procedure. The ability to prescribe and/or dispense ~~schedule I or~~ schedule II substances within the City is hereby declared to be and is a privilege subject to review and approval, suspension, termination, and the imposition of conditions as provided below, and no person may reasonably rely upon the granting of or the continuation of that privilege. Pain management clinics and pharmacies, as defined under section 7-301, that do not fall under an exemption and Any pain management clinic or pharmacy that wishes to prescribe or dispense ~~schedule I or~~ schedule II substances after December 31, 2011, including

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any pain management clinic or pharmacy to whom an authorization or approval for prescribing or dispensing has previously been granted by the city or which was not previously required to obtain any city approval, shall be required to make an application and receive approval for a pain medication license no later than December 31, 2011.

Sec. 7-303. Application and review procedures for pain medication licenses.

(a) Application. ~~One~~ ~~An~~ application per location for a pain medication license shall be submitted, on a form furnished by the city, to the director of community development or his/her designee, along with a nonrefundable application fee of five hundred (500) dollars per ~~location~~~~registered address~~. The amount of the application fee may be modified by resolution of the city commission after a public hearing.

(b) Public notice. All owners of property located within five hundred (500) feet of the parcel for which a new pain medication license is requested shall be notified of the application. The letter of notification will set forth a description of the request and a date, time and place of the hearing before the city commission. Letters will be mailed by the city to said property owners by first class mail using a certified list provided by the applicant as part of its application. The required notification shall be postmarked at least fifteen (15) days prior to the hearing date at which the application will be heard before the city commission. Staff is authorized to charge the applicant a reasonable fee for the city's cost of preparing and mailing notices.

(c) Public Hearing. The city commission, in accordance with the procedures of this chapter, shall conduct a public hearing on the application for a pain medication license, during which staff and the licensee may address the city commission.

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(d) Determination. The city commission shall approve, approve with conditions, or deny the request for a pain medication license in accordance with the procedures of section 7-304.

(1) Approval. The city commission may approve an application for a pain medication license upon a determination that the subject application is consistent with the health, safety, and welfare of the city and pursuant to the criteria and conditions set forth in sections 7-304 and 7-305 of this article.

(2) Conditional approval. The city commission may require, as a condition of the privilege of granting of a pain medication license, compliance with any reasonable condition deemed to be necessary to mitigate or eliminate the potential adverse effects of such dispensing and prescribing ~~schedule I and~~ schedule II substances, in addition to the conditions provided in section 7-305. These conditions may include, without being limited to, provision by the owner or operator at his/her expense measures designed for security, crowd control, noise attenuation, crime prevention or reduction, and other similar protections designed to mitigate the effects of the operation of the pain management clinic or pharmacy.

(3) Denial. An application which is determined by the city commission to be inconsistent with the public health, safety, and welfare or the review criteria set forth herein, shall be denied. Any applicant who makes an application which is denied, after any appeal therefrom, shall be precluded from making another application for

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twenty-four (24) months from the date of such denial of the application or conclusion of the appeal.

Sec. 7-304. Review criteria for pain medication licenses.

An application for a pain medication license shall be submitted to the director of community development. The development review committee shall review the application, based on the criteria of this subsection and consistency of the application with the public health, safety, and welfare of the city, and shall make a recommendation to the director of community development. The director shall prepare a report to the city commission recommending approval, approval with conditions, or denial, based upon the following criteria:

(a) The amount and degree of law enforcement activities generated by the operation of any such establishment, ~~and~~ by previous similar establishments in the same location or at any location involving any of the same owners or operators. Consideration will be given as to whether the calls are initiated by the pain medication license holder and what efforts have been taken to reduce unlawful activity at establishments owned or operated by the applicant;

(b) A criminal background check of all owners or operators or any other party with a proprietary interest in such establishment shall be conducted in order to provide assurances that such persons have no criminal convictions, including but not limited to convictions under Florida Statutes Chapter 893 within the last ten (10) years;

(c) The adverse effects of prescribing, storing, and/or dispensing ~~schedule I or~~ schedule II substances shall not place an undue burden on the neighborhood in proximity to the establishment, especially with respect to patron activities and effects of noise, traffic, parking, and vehicular use; and

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(d) Compatibility with the existing uses in the neighborhood in proximity to the establishment.

(e) The amount and degree of security measures in place including but not limited to: impact resistant glass, exterior lighting, security cameras, video recordings, alarm and panic system, Crime Prevention through Environmental Design ("CPTED") standards, principals, and signage.

Sec. 7-305. Mandatory conditions for pain medication licenses.

All pain medication licenses shall require compliance with the following conditions:

(a) During all hours of operation, the pain management clinic or pharmacy shall comply with the following conditions:

(1) Each pain management clinic or pharmacy shall be registered separately for each ~~location address of its operations~~ within the City regardless of whether each clinic or pharmacy is operated under the same business name or management as another clinic or pharmacy;

(2) Each application for a pain management clinic or pharmacy shall disclose each owner and operator of such clinic or pharmacy, and individual principals of any entity that owns such clinic or pharmacy;

~~(3) Each pain management clinic or pharmacy shall install a video system comprising a minimum of four (4), low light, infrared cameras, connected to a 24 hour loop DVR system, to provide 24 hour camera coverage for all entrances, exits, and storage areas. Exterior cameras must be weather proof. The system must be activated and recording video during all hours of operation;~~

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~~(4) The video must be maintained for six (6) months and made available immediately to the City of Sunrise Police Department upon request for inspection and copying, as may be permitted by law;~~

~~(5) At least one (1) clearly visible sign shall be posted at each entrance and exit, which shall read as follows: "This Facility is being video recorded and monitored for potential viewing by the City of Sunrise Police Department, as permitted by law;"~~

(36) The pain management clinic or pharmacy shall not limit the form of payment for goods or service to cash only; **and**

(47) The pain management clinic or pharmacy shall not accept cash for payment of goods and services associated with the prescribing or dispensing of ~~schedule I or~~ schedule II substances except for insurance co-pays, coinsurance, or deductibles; **and**

(59) Such other conditions as the City Commission determines are reasonably relates to the public health, safety and welfare.

(b) Pharmacies: During all hours of operation, the pharmacy shall comply with the following conditions:

(1) The pharmacy shall have a State of Florida licensed pharmacist physically on premises at all times during all hours of operation;

(2) The pharmacy shall post a copy of all licensed pharmacists' licenses;

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- (3) The pharmacy 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 dispensing of any ~~schedule I or~~ schedule II substances;
- (4) The pharmacy shall only dispense any schedule II substances as defined in Section 7-301 between the hours of 9:00 a.m. to 7:00 p.m.;
- (54) The pharmacy shall not dispense more than a thirty (30) day supply of any ~~schedule I or~~ schedule II substance provided the patient's valid identification is from the State of Florida. For any patient whose valid identification is outside the State of Florida, the pharmacy shall not dispense more than a seventy two (72) hour supply of any ~~schedule I or~~ schedule II substance except that a pharmacy may dispense up to a thirty (30) day supply of any schedule II substance provided the patient presents (i) a valid photo identification, in accordance with section 7-305(b)(3), and (ii) a City of Sunrise water bill or FPL utility bill that is not older three (3) months, that is in the name of the patient or the patient's spouse, and that shows a City of Sunrise address.
- (65) The pharmacy shall maintain a legible copy of the prescription for schedule II substances as defined by section 7-301; the patient's ~~and associated~~ photo identification ~~for~~ of each prescription dispensed ~~or delivered;~~ and the City of Sunrise water bill or FPL utility bill, if applicable. The records must be

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maintained for a minimum of two (2) ~~five (5)~~ years. Such records shall be available for inspection and copying by the law enforcement agencies, as permitted by Section 893.07, Florida Statutes~~law~~, for a minimum of two (2) ~~five (5)~~ years;

(~~76~~) The delivery, including mail order delivery, of all ~~schedule I and~~ schedule II substances shall be prohibited except (i) to any facility licensed under Florida Statutes Chapters 400 or 429, or (ii) while fully complying with sections 7-305(b)(5) and 7-305(b)(6), to any Sunrise address listed on the patient's valid photo identification, or (iii) while fully complying with sections 7-305(b)(5) and 7-305(b)(6), to the Sunrise address listed on the City of Sunrise water bill or FPL utility bill for the patient or the patient's spouse, if applicable;

(~~87~~) Provide a monthly summary report to the Police Department for all ~~schedule I and~~ schedule II substances as defined in section 7-301 that have been dispensed by this 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. A list of all physicians that have prescribed ~~schedule I and~~ schedule II substances and the business address of the prescribing physician;
- b. The number of prescriptions written by each physician or physicians' office;
- c. The number of prescriptions associated with each type of ~~schedule I and~~ schedule II substances;

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d. Certification from the applicant that the pain management clinic or pharmacy is in compliance with all provisions of the pain medication license; and,

e. A current listing of all suppliers/wholesalers for all ~~schedule I and~~ schedule II substances.

(c) Pain management clinics: During all hours of operation, the pain management clinic shall comply with the following conditions:

(1) The pain management clinic shall only operate between the hours of 9:00 a.m. to 6:00 p.m.;

(21) Prior to prescribing or dispensing any ~~schedule I or~~ schedule II substances, the licensed physician shall perform a physical examination of a patient on the same day at the same location that he or she dispenses or prescribes any ~~schedule I or~~ schedule II substance. The physical exam shall be performed by the licensed physician and shall not ~~be performed by include~~ a nurse or physician's assistant. A written report of the physical examination shall be placed in the patient record;

(32) 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 or dispensing of any ~~schedule I or~~ schedule II substances;

(43) A physician shall not prescribe or dispense more than a thirty (30) day supply of any ~~schedule I or~~ schedule II substance provided the patient's valid identification is from the State of Florida. For any patient whose valid identification is outside the State of Florida, the

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physician shall not prescribe or dispense more than a seventy two (72) hour supply of any ~~schedule I or~~ schedule II substance except that a physician may prescribe or dispense up to a thirty (30) day supply of any schedule II substance provided the patient presents (i) a valid photo identification in accordance with section 7-305(c)(3), and (ii) a City of Sunrise water bill or FPL utility bill that is not older three (3) months, that is in the name of the patient or the patient's spouse, and that shows a City of Sunrise address;

(54) The physician shall maintain a legible copy of the prescription for schedule II substances as defined by section 7-301; the patient's and associated photo identification for of each prescription; and the City of Sunrise water bill or FPL utility bill required by section 7-305(c)(4), if applicable. The records must be maintained for a minimum of two (2) five (5) 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) five (5) years;

(65) 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;

(76) 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

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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, spiritual, and/or ethnic benefits that may impact an 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; ~~and~~
- g. A written procedure for systematically coordinating and updating the pain treatment plan of patient in response to documented pain status; ~~and-~~
- 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**

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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.

(87) 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

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~~prescribed regimens; and in pain assessment tools by
a pain management organization;~~

~~e. Incorporation of pain assessment, monitoring and
management into initial orientation and ongoing
education of all appropriate staff;~~

cd. Patient rights; and

de. Implementation of the plan shall include records of
attendance of each program for each member of the
pain management clinic's staff.

(98) Provide a monthly summary report to the Police Department
for all ~~schedule I and~~ schedule II substances as defined in
section 7-301 that have been prescribed or dispensed by
this 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
I and~~ 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 I and~~ schedule II substances.

Sec. 7-306. Issuance, revocation, and renewal of pain medication
license.

(a) Approval and issuance. Following consideration of the
application for pain medication license by the development review
committee, the committee shall forward its recommendation for approval,
denial, or conditional approval of the license to the director of

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community development or his/her designee and the director shall place the application, with recommendations, on the next available city commission agenda, for public hearing. Upon approval or conditional approval of an application for a pain management license by the city commission, based on the criteria of subsection 7-304, the pain medication license shall be issued, for a period of one (1) year.

(b) Revocation, suspension, or imposition of additional conditions and/or restrictions.

(1) If, at any time, the director of community development or his/her designee determines that any pain medication license holder has failed to comply with any applicable conditions of its license, or is operating in a manner harmful to the public health, safety or welfare and not in compliance with the terms of this article he/she may place on the city commission public hearing agenda an item to determine whether the pain medication license should be revoked. The director of community development or his/her designee shall prepare a report with analysis showing the compliance or non-compliance with the following criteria:

a. During the operation of the pain management clinic or pharmacy, the pain medication license holder has or has not complied with all conditions imposed at the time of license issuance; or

b. During the operation of the pain management clinic or pharmacy, the pain medication license holder has or has not taken all reasonable precautions to discourage unlawful activity, including vandalism, crimes against property or persons, disturbances,

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loitering of patrons, narcotics use or distribution,
excessive noise, vehicular use by impaired patrons,
and illegal activity of any kind by employees,
patrons or others associated with the establishment;
or

c. During the operation of the pain management clinic or
pharmacy, the pain medication license holder has or
has not taken all reasonable efforts to prevent
nuisances and/or criminal activity both inside and
outside the establishment; or

d. During the hours of operation, the pain medication
license holder has or has not exceeded the number of
occupants set by the city building and fire officials
as the maximum capacity (persons) for the
establishment; or

e. The pain medication license holder is in compliance
with public health, safety or welfare.

(2) The city manager or his/her designee, on the recommendation
of the Police Chief, shall have the power to enter an order
immediately revoking a pain medication license or
suspending the operation of said facility.

(3) Within thirty (30) days of the suspension of the operation
of the facility, as noted above, a public hearing on said
revocation, suspension, or imposition of additional
conditions shall be conducted in the manner described in
section 7-303. The city commission will consider the matter
de novo, and will determine whether the city manager and
his/her designee was justified in revoking and/or

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suspending the pain medication license. The presumption of the correctness of the decision may be overcome by the license holder, upon a showing of competent substantial evidence that the finding of the city manager and/or his/her designee was not correct. The burden of proof will be on the applicant seeking the reinstatement of a revoked license.

(4) After consideration of the matter, the city commission may revoke or suspend the pain medication license or allow the licensee to continue operating with the prescribing or dispensing of ~~schedule I and/or~~ schedule II substances, subject to any reasonable additional conditions deemed necessary to mitigate or eliminate the adverse effects of such operation.

(5) Should the pain medication license be revoked, no reapplication for a pain medication license by the owners or operators shall be considered for any location within a twenty-four (24) month period following the date of final revocation. After the expiration of the twenty-four (24) month period, a new application and corresponding fee must be submitted.

(c) *Renewal of pain medication license.* Each pain medication license shall be required to be renewed no later than one (1) year following the date of initial granting of the license. The annual renewal of any pain medication license shall be processed by the director of community development or his/her designee and reviewed based upon the criteria of subsection 7-304. If the director of community development or his/her designee approves the renewal, the

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license shall be renewed upon payment of the nonrefundable annual fee in the amount of two hundred (\$200) dollars per registered address. The amount of the renewal fee may be modified by resolution of the city commission after a public hearing. If the director of community development or his/her designee denies the renewal, the licensee shall have ten (10) days from the date of the notice of denial to appeal the decision to the city commission in accordance with subsection 7-306(d). The city commission shall use the criteria and procedure specified in subsection 7-306(b) in determining said appeal. At the time of the requested license renewal, the director of community development or his/her designee may, based on the criteria of subsection 7-304, recommend the imposition of additional conditions upon the pain medication licensee. If additional conditions are recommended by the director of community development or his/her designee, the renewal shall be placed on the city commission agenda for public hearing on the proposed imposition of additional conditions, in accordance with subsection 7-306(b). If a license is non-renewed or the commission denies an appeal of the non-renewal, the owners and operators shall not be allowed to apply for a new pain medication license for a period of twenty-four (24) months. In the event the City non-renews, revokes, or denies a pain medication license, the City reserves the right to contact the appropriate local, state and federal agencies for administrative or criminal action.

(d) Appeal procedure.

- (1) The owner of a business for which a pain medication license is non-renewed pursuant to the terms of the Article, may appeal to the city commission, consistent with these provisions, any decision rendered by the director of

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community development to deny the renewal of a pain medication license. Within ten (10) days of the decision, an appeal may be made in writing to the city commission and the city shall schedule a public hearing within thirty (30) days. Notice shall be given to the owner and a public hearing shall be held as prescribed by subsection 7-306(b). The city commission shall consider the appeal and make a decision (with reasons stated) based on the standards set forth in section 7-303 and ~~sub~~ subsection 7-304.

(2) Appeal of any city commission decision regarding the issuance, suspension, revocation or non-renewal of pain medication license shall be to the circuit court in and for Broward County, in the manner provided by state law. In accordance with state law, failure to appeal within thirty (30) days of the rendition of the decision shall result in the applicant waiving his right to appeal.

(e) Transferability. A pain management license shall not be transferable. Any change in ownership shall require the new owner to reapply for a new license prior to the prescribing, storing or dispensing of ~~schedule I and~~ schedule II substances.

Section 4. That the Agreement for Pain Medication License Exemption, which is attached as Exhibit "A" to this ordinance, be inserted within Section 7-301 of the Code of the City of Sunrise, Florida as Figure X-1. **The City Manager is authorized to execute Agreements for Pain Medication License Exemption that substantially conform to Figure X-1 subject to City Attorney approval.**

Section 5. Based on the needs established by this Ordinance and Ordinance 512 and to ensure consistent dates and application of

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procedures, the pain clinic moratorium established in Ordinance 512 ~~and~~ 512-10-A and the pharmacy moratorium established in Ordinance 512-10-B and 512-11-A are hereby extended through December 31, 2011.

Section 6. Conflict. All ordinances or parts of ordinances, all City Code sections or parts of City Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 7. Severability. Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

Section 8. Inclusion in the Code. It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Sunrise, Florida.

Section 9. Effective Date. This Ordinance shall be effective immediately to allow new and existing businesses to apply and receive the pain medication license **effective by** December 31, 2011 **or later**.

PASSED AND ADOPTED upon this first reading this ____ DAY OF _____, 2011.

PASSED AND ADOPTED upon this second reading this ____ DAY OF _____, 2011.

Mayor Michael J. Ryan

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Authentication:

Felicia M. Bravo
City Clerk

FIRST READING

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SECOND: _____

ALU: _____
ROSEN: _____
SCUOTTO: _____
SOFIELD: _____
RYAN: _____

SECOND READING

MOTION: _____
SECOND: _____

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ROSEN: _____
SCUOTTO: _____
SOFIELD: _____
RYAN: _____

Approved by the City Attorney
As to Form and Legal Sufficiency

Stuart R. Michelson

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EXHIBIT A

Figure X-1

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