

BEFORE THE FLOYD COUNTY COMMISSIONERS  
STATE OF INDIANA

ORDINANCE NO. 2013-OR- III

(Moratorium – New Pain Management Clinics)

**AN ORDINANCE OF THE COUNTY OF FLOYD, INDIANA, IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW PAIN MANAGEMENT CLINICS WITHIN THE COUNTY OF FLOYD; ADOPTING FINDINGS; PROVIDING DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, a pattern of purchase, illegal distribution and personal abuse of substances controlled by federal and/or state law has been linked in large part to certain pain management clinics or medical facilities operating in Indiana;

**WHEREAS**, the illegal activity involving substances controlled by federal and/or state law associated with such clinics has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the residents of the FLOYD COUNTY; and

**WHEREAS**, the Indiana Legislature has similarly identified concerns regarding the increased abuse of substances controlled by federal and/or state law and higher frequency of injury and death occurring as a result of the increased availability of controlled substances via medical practitioners operating in pain management clinics or facilities and is presently studying the adoption of legislation to further regulate operators of such clinics or facilities, or physicians and other medical practitioners providing prescriptions for and/or dispensing controlled substances through such clinics, facilities or offices in order to conduct such business; and

**WHEREAS**, the State of Kentucky has recently enacted legislation that further regulates pain management clinics or facilities;

**WHEREAS**, the existence of the new laws in the State of Kentucky may increase the number of pain management clinics seeking to operate in the Floyd County; and

**WHEREAS**, the Commissioners finds that the existing zoning laws and regulations do not adequately address the location and operation of pain management clinics within the County of Floyd; and

**WHEREAS**, the Commissioners believe further regulation of new pain management clinics is necessary in order to limit or curb negative impacts created by these clinics, such as illegal prescription drug trafficking and sales of illegal drugs around the clinics, and loitering in areas surrounding the clinics; and

**WHEREAS**, the Commissioners find that, due to the significant, potential negative impacts associated with certain pain management clinics, it is necessary to impose a temporary moratorium on new pain management clinics in Floyd County in order to allow time to develop zoning regulations to prevent or mitigate the incidence of such potential negative impacts; and

**WHEREAS**, the Commissioners believe added problems would be vehicular and foot traffic and reduction of property values; and

**WHEREAS**, the Commissioners find that the adoption of this Ordinance is necessary in order to protect the public health, safety and welfare;

**NOW THEREFORE BE IT ENACTED** by the Commissioners for Floyd County, Indiana:

**SECTION 1: Adoption of Findings.** The foregoing findings are true and correct and are hereby made a part hereof and incorporated herein by reference.

**SECTION 2: Definitions.** For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings:

a. *Chronic Nonmalignant Pain* is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain or for a period of more than 90 days after surgery.

b. *Pain Management Clinic* means any privately owned clinic, facility, or office which advertises in any medium concerning the availability of any type of pain-management services or employs a physician or osteopathic physician or nurse who is primarily engaged in the treatment of pain by prescribing or dispensing substances controlled by federal and/or state law, but the term shall not include:

A clinic where the majority of the physicians who provide services in the clinic primarily provide surgical services;

A clinic that is owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;

A clinic that is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

A clinic that does not prescribe or dispense substances controlled by federal and/or state law for the treatment of pain; or

A clinic that is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3).

For the purposes of this definition, a physician, including an osteopathic physician, is considered to be primarily engaged in the treatment of pain by prescribing or dispensing substances controlled by federal and/or state law when the majority of the patients seen by such physician are prescribed or dispensed a substance controlled by federal or state law for the treatment or purported treatment of chronic nonmalignant pain.

**SECTION 3: Moratorium.** There shall be no new pain management clinics located within Floyd County for a period of Three hundred and sixty-five (365) days from the effective date of this Ordinance, or until such time as the Commissioners adopt new zoning regulations governing Pain Management Clinics and expressly lifts the moratorium hereby imposed, whichever occurs first. For the purposes of this Ordinance, a Pain Management Clinic shall be considered "new" and shall not be permitted to operate, and shall not conduct business or otherwise operate, if it is not in operation as of the effective date of this Ordinance. Additionally, no permits or approvals of any kind, including, without limitation, issuance of a building permits, variances, re-zoning, shall be granted and no applications for such permits and approvals shall be accepted or received for any new Pain Management Clinics within the County of Floyd during the moratorium period hereby established.

**SECTION 4: Penalties.** The County may bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

**SECTION 5: Severability.** If any word, sentence, clause, phrase or provision of this Ordinance, for any reason, is held to be unconstitutional, void, or invalid, the validity of the remainder of this Ordinance shall not be affected thereby.

**SECTION 6: Effective Date.** This Ordinance shall become effective immediately upon its passage.

Passed and adopted this 5<sup>th</sup> day of Jan, 2013.

BOARD OF COUNTY COMMISSIONERS  
OF FLOYD COUNTY, INDIANA

Steve A. Bunt

ATTEST:

[Signature]  
Clerk

Approved and signed by me at 6:00 o'clock P.m., this 5<sup>th</sup> day of Jan, 2013.

Steve A. Bunt  
D. Mark [Signature]  
Charl A. [Signature]

**FLOYD COUNTY PLAN COMMISSION  
CERTIFICATION OF RECOMMENDATION**

**MORATORIUM FOR NEW PAIN MANAGEMENT CLINICS**


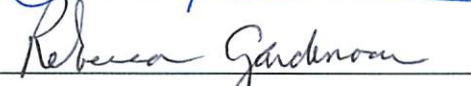
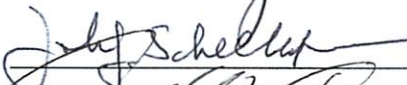
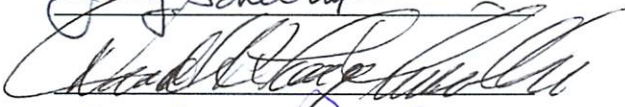



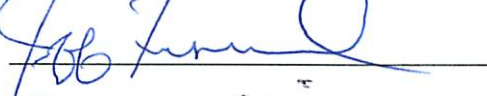
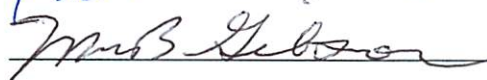
The Floyd County Plan Commission conducted a public hearing on the *Moratorium for New Pain Management Clinics* at the meeting held on the 28<sup>th</sup> day of *January, 2013* and upon careful review hereby makes:

**DECISION:**

- A Favorable Recommendation
- An Unfavorable Recommendation
- No Recommendation

Unanimously by voice vote ( 9 - 0 ). The staff of the Floyd County Plan Commission shall forward this certification to the Floyd County Commissioners for their consideration.


**Commission Members in Favor:**

  
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**Commission Members Opposed:**

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Date: January 28<sup>th</sup>, 2013

  
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Linda Barksdale  
Executive Plan Director  
Floyd County Plan Commission