

**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Chairman and Planning Board members

**From:** Ginny Haller, Planner

**Through:** Donald Leland Craig, Planning Director

**Meeting Date:** October 18, 2012

**RE:** **Zoning in Progress – Pain Management Clinics** - A resolution amending Planning Board Resolution 2012-38, recommending an ordinance to the City Commission invoking the zoning in progress doctrine; declaring that the City is considering amendments to its Land Development Regulations to adopt criteria permitting and regulating the location of pain management clinics; directing Building and Planning department staff to defer the acceptance and processing of applications requiring the issuance of permitting the location of pain management clinics; continuing this policy until new permit regulations or amended Land Development regulations are adopted by the City Commission or until the passage of 180 days from the date of this resolution, whichever occurs first; providing for severability, providing for repeal of inconsistent provisions, providing for an effective date.

**ACTION STATEMENT**

**Request:** Amending a previous resolution pertaining to a Zoning in Progress to adopt criteria permitting and regulating the location of pain management clinics.

**Location:** Citywide

**BACKGROUND**

The Planning Board reviewed the Zoning in Progress doctrine for pain management clinics allowed within city limits as a resolution at the regular August 30, 2012 meeting.

This request is for approval of a resolution recommending an ordinance to the City Commission.

In a letter dated March 5, 2012, the Planning Director recommended the Planning Department initiate a Zoning in Progress (ZIP) to address the issue of pain management clinics to protect the health, safety and welfare of the citizens of Key West. The city does not have a mechanism to regulate the use, location, design, operation, maintenance and number of pain management clinics. Many cities and counties throughout Florida have regulated pain management clinics to protect their communities against the epidemic of pain medication distribution and fraud.

The purpose of a ZIP gives Planning staff 180 days to explore potential zoning designations for the location and regulation of the clinics such as Commercial General (CG) and Limited Commercial Districts (CL). Further, there are other determinations that need to be contemplated. Staff has identified the following issues that need to be addressed:

1. Establish a definition of Pain Management Clinic;
2. Limit Pain Management Clinics as Conditional Use in certain zoning districts;
3. Regulate distance of clinics as 1,000 feet from schools;
4. Regulate distance from other Pain Management Clinics;
5. Regulate distance from pharmacies;
6. Limitation of on-site dispensing of pain medication.

Other Florida cities and counties have in the last few years regulated the number and location of pain management clinics, such as: Deerfield Beach, Palm Beach County, Margate, Wellington Village, Coral Springs, Cooper City and Broward County.

### **RECOMMENDATION**

Planning Staff recommends **approval**.

**Draft  
Resolution**

**PLANNING BOARD  
RESOLUTION No. 2012-**

**A RESOLUTION AMENDING PLANNING BOARD RESOLUTION 2012-38, RECOMMENDING AN ORDINANCE TO THE CITY COMMISSION INVOKING THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS TO ADOPT CRITERIA PERMITTING AND REGULATING THE LOCATION OF PAIN MANAGEMENT CLINICS; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO DEFER THE ACCEPTANCE AND PROCESSING OF APPLICATIONS REQUIRING THE ISSUANCE OF PERMITTING THE LOCATION OF PAIN MANAGEMENT CLINICS; CONTINUING THIS POLICY UNTIL NEW PERMIT REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION OR UNTIL THE PASSAGE OF 180 DAYS FROM THE DATE OF THIS RESOLUTION, WHICHEVER OCCURS FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Key West Planning Board desires to review existing land development regulations (the “LDRs”) to determine whether there is a need to adopt criteria permitting and regulating the location of pain management clinics within the City of Key West; and

**WHEREAS**, the Planning Board has directed planning staff to continue developing proposed criteria for City Commission review and adoption; and

\_\_\_\_\_ Chairman  
\_\_\_\_\_ Planning Director

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

**WHEREAS**, the Planning Board wishes to definitively place all parties on notice that it is considering amending the LDRs and City Ordinances.

**WHEREAS**, the Planning Board approved a resolution invoking the Zoning in Progress Doctrine on August 30, 2012 through Resolution 2012-38; and

**WHEREAS**, the Planning Board wishes to amend Resolution 2012-38 recommending an Ordinance to the City Commission invoking the zoning in progress doctrine; and

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: **Zoning in Progress.** The City hereby recognizes that City planning and legal staff are preparing and processing ordinances (the "Pending Ordinances") that would adopt the Criteria. The Pending Ordinances, if adopted, will amend the City's LDRs. All affected property and business owners are placed on notice with respect to the Pending Ordinances and the action being taken by the appropriate departments within the City.

Section 2: That this policy shall be in effect until new land development regulations or

amended land development regulations are adopted by the City Commission or until the passage of 180 days, whichever occurs first.

Section 3: **Public Notice.** The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a meeting held this 18<sup>TH</sup> Day of October, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.

\_\_\_\_\_  
Richard Klitenick, Chairman  
Key West Planning Board

\_\_\_\_\_  
Date

**Attest:**

\_\_\_\_\_  
Donald Leland Craig, AICP  
Planning Director

\_\_\_\_\_  
Date

**Filed with Clerk**

\_\_\_\_\_  
Cheryl Smith, City Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

## **Additional Information**





THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

To: Shawn Smith, Esq., City Attorney  
From: Donald Leland Craig, AICP, Planning Director  
Date: March 5, 2012  
Reference: Zoning in Progress, Pain Management Clinics

It has come to my attention that the City does not have a mechanism for regulating the use location, design, operation, and maintenance nor number of Pain Management Clinics in our community. As you are aware many cities and communities throughout Florida have now regulated Pain Management Clinics, defined by Section 458.3265 and/or 459.0137, Florida Statutes in order to protect the community against the widespread national and state epidemic of pain medication distribution and fraud.

I have attached the relevant Florida Statutes described above and Broward County's Ordinance that regulates the use of Pain Management Clinics within the Land Development Regulations for your reference.

I believe it is in the best interest of the City to immediately initiate zoning in Progress to address the issue of Pain Management Clinics to protect the health, safety and welfare of our citizens. If you agree the planning staff would have ready for the April Planning Board a ZIP Ordinance for this purpose.

Your guidance is much appreciated.

K:\zoning in progress\20120305 Pain Management Clinics.doc

Attachments:

Section 458.3265, Florida Statutes  
Section 459.0137, Florida Statutes  
Section 39-243. - Pain management clinics. Broward County Code of Ordinances

Sec. 39-243. - Pain management clinics.

Notwithstanding any other provision of the Broward County Code of Ordinances that allows medical clinics, doctors' offices, or pharmacies as a permitted use in any other zoning district, Pain Management Clinics, as defined in Section 39-4, shall be allowed only as a conditional use in the B-3 Intense Commercial Business Zoning District. In order to provide adequate protection to the community and establish the legitimacy of the business, the following regulations shall apply to the location, design, operation, and maintenance of Pain Management Clinics, and shall be in addition to all other requirements or limitations of this chapter:

- (a) A Certificate of Use, in accordance with Section 39-19, shall be obtained from the zoning official prior to the establishment of any Pain Management Clinic.
- (b) The application for a Certificate of Use for a Pain Management Clinic shall disclose, in detail, the owners and operators of the facility, and shall be updated by the owner/operator annually at the time of renewal of the business tax receipt for the business, or at any time that there is a change of owner or the physician of record pursuant to Section 458.3265 or 459.0137, Florida Statutes, as amended.
- (c) The applicant shall provide to the County proof of registration with the Florida Department of Health, pursuant to Section 458.3265 or 459.0137, Florida Statutes, as amended, prior to the issuance of a Certificate of Use for the business. If the registration of a Pain Management Clinic is revoked or suspended by the Florida Department of Health, the County's Certificate of Use shall be revoked automatically and shall not be subject to the provisions of Subsection (k) of this section.
- (d) The application for a Certificate of Use shall include an affidavit by the owner or the physician of record pursuant to Section 458.3265 or 459.0137, Florida Statutes, as amended, attesting to the fact that no employee of the business, nor any independent contractor or volunteer having regular contact with customers of the business, has been convicted of a drug-related felony within the five (5) year period prior to the date of the application, and that the business shall not employ or allow any such convicted employee, independent contractor, or volunteer on the premises thereafter.
- (e) A Pain Management Clinic shall be limited to the hours of operation between 7:00 a.m. and 9:00 p.m., Monday through Saturday.
- (f) A Pain Management Clinic shall post the required Certificate of Use in a conspicuous location at or near the entrance to the facility so that it may be easily read at any time.
- (g) No Pain Management Clinic shall be permitted to be located within one thousand two hundred (1,200) feet of another Pain Management Clinic or a place of worship, child care center, or educational center. The applicant shall furnish a certified survey to the County prior to the issuance of a Certificate of Use for the business. Said survey shall be prepared by a registered land surveyor in the state of Florida, indicating the distance in linear feet between the proposed Pain Management Clinic and another Pain Management