

**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: April 18, 2013

Agenda Item: Consideration of an ordinance of the Key West Planning Board 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, 122-158, 122-159, 122-1550, 122-1551, 122-1552, 122-1553 and Sections 122-1554-122-1560 as reserved; allowing and registering Pain Management Clinics as defined; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: Approval of a Resolution to adopt criteria permitting and regulating the location of Pain Management Clinics.

Location: Citywide

Background:

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. Currently, the city does not have a mechanism to regulate the use, location, 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.

Planning Board Resolution No. 2012-46 and Ordinance No. 12-35 invoked the ZIP to allow planning staff to develop proposed criteria permitting and regulating the location of Pain Management Clinics within the City of Key West.

Process:

**Planning Board Meeting
City Commission Meetings**

April 18, 2013
TBD

Summary:

The ZIP gave Planning staff time to explore potential zoning designations for the location and regulation of the clinics. Staff came to the conclusion that such uses should be limited to the Commercial General (CG) zoning district; and be limited and controlled by the following land use management framework:

1. Definition of Pain Management Clinic – generally an establishment that is a privately owned Pain Management Clinic, facility or office, 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 any type of pain management services.
2. Limit Pain Management Clinics as Conditional Use limited to the CG zoning district, allowing for wide dispersal of such uses.
3. Regulate distance of the clinics from schools at 500 feet.
4. Regulate distance of the clinics from other Pain Management Clinics at 500 feet.
5. Regulate distance of the clinics from pharmacies at 500 feet.

The attached resolution recommends the repeal of the ZIP ordinance prohibiting Pain Management Clinics implemented by Ordinance No. 2012-35; and the establishment of a Pain Management Clinic section of the Code of Ordinances. The proposed Pain Management Clinic section of the Code is:

Sec. 122-1547.	Pain Management Clinics – Purpose
Sec. 122-1548.	Definitions
Sec. 122-1549.	General Regulations
Sec. 122-1550.	Requirements for New Pain Management Clinics
Sec. 122-1551.	Separation Requirements
Sec. 122-1552.	Licensing
Sec. 122-1553.	Penalty

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.

The recommended ordinance recognizes the direct negative possible impacts of unregulated Pain Management Clinics, and provides a balanced approach allowing legitimate pain clinics already partially regulated by the State and Federal authorities to be established in the City to serve local residents, who would otherwise have to travel to Miami for treatment.

Analysis:

The Planning Board is required to consider the criteria in Section 90-521 in evaluating the proposed changes to the Code for Pain Management Clinics:

1. Consistency with the Comprehensive Plan. The proposed changes are consistent with the Comp Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.
2. Conformance with requirements of Code. The proposal is in conformance with all applicable requirements of the Code.
3. Changed conditions. Other Florida counties and municipalities have enacted ordinances that regulate the operation of pain management clinics to prevent the dispensing of excessive amounts of controlled substances.
4. Land use compatibility. This proposal would regulate the location and separation requirements of pain management clinics from other pain management clinics, schools, churches, and pharmacies.
5. Adequate public facilities. This proposal would not result in extra demands on public facilities and services.
6. Natural environment. This proposal would not adversely affect the natural environment.
7. Economic effects. This proposal would not adversely affect the property values in the areas. There is no anticipated financial impact to the City related to this request.
8. Orderly development. This project would no negative effects on an orderly land use pattern.
9. Public interest; enabling act. It is in the best interest of the residents of Key West to enact an ordinance regulating Pain Management Clinics and their impacts on the community. This project would not be conflict with the public interest, and will be in harmony with the purpose and interest of the land development regulations.
10. Other matters. The State of Florida has implemented a Prescription Drug Monitoring Program 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 check the database before prescribing opiate drugs.

RECOMMENDATION

Planning Staff recommends **approval** of the proposed changes to the ordinance.

Draft Resolution

PLANNING BOARD
RESOLUTION No. 2013-_____

A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING AN ORDINANCE OF THE CITY COMMISSION 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, 122-158, 122-159, 122-1550, 122-1551, 122-1552, 122-1553 AND SECTIONS 122-1554-122-1560 AS RESERVED; ALLOWING AND REGISTERING 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

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____Planning Director

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 may benefit from examining the successful practices of other cities and counties which have addressed the negative aspects of Pain Management Clinics; and

WHEREAS, 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 impacts on the community; and

WHEREAS, the Planning Board has reviewed existing LDRs and has 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, with the adoption of this ordinance, the Planning Board recommends to the City Commission the lifting the Zoning in Progress implemented in Ordinance No. 2012-35 and to impose the substantive land use and zoning regulations contained herein on the establishment of Pain Management Clinics in the City of Key West.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE

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Resolution number 2013-

____ Chairman
____ Planning Director

CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

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

Section 2: Establishing Pain Management Clinics as a Conditional Use in the Commercial General (CG) zoning district – Section 122-918 is worded as follows:

Section 122-418(22) Pain Management Clinics (see Division 14 of Article V)

Section 3: Creation of Pain Management Clinic Ordinance. A Pain Management Clinic Ordinance is hereby created to read as follows:

Section 4: 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.

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____ Chairman
____ Planning Director

Section 5: 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; (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

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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

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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 6: 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.

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(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 Dangerous Drugs 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 Dangerous Drugs 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.

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Section 7: 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 8: 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

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____ Planning Director

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 9: 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 10: 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.

Sec. 122-1554-122-1560. Reserved.

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____ Chairman
____ Planning Director

Section 11: **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.

Section 12: 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 therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 13: 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.

Section 14: 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 18TH Day of April, 2013.

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Resolution number 2013-

____ Chairman
____ Planning Director

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

Prior Approvals

ORDINANCE No. 12-35

AN ORDINANCE OF THE CITY OF KEY WEST 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 ORDINANCE, WHICHEVER OCCURS FIRST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Key West City Commission 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 City Commission has directed planning staff to continue developing proposed criteria for City Commission review and adoption; and

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

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION 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. This policy may be extended by Resolution of the City Commission for additional 180 day periods to complete the tasks outlined herein.

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 Ordinance shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 4: 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 therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 5: 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.

Section 6: This Ordinance 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 and approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes, however City staff shall continue to utilize the March 5, 2012 date as the commencement of implementation of the pending ordinance doctrine.

Read and passed on first reading at a regular meeting held this 20th day of November, 2012.

Read and passed on final reading at a regular meeting held this 4th day of December, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 5th day of December, 2012.

Filed with the Clerk December 5, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

**PLANNING BOARD
RESOLUTION No. 2012-46**

A RESOLUTION OF THE KEY WEST PLANNING BOARD 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


Chairman

Planning Director

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 Resolution 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 Resolution. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

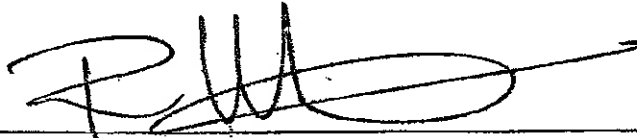
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.


Chairman

Planning Director

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

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



Richard Klitenick, Chairman
Key West Planning Board

10/23/2012

Date

Attest:



Donald Leland Craig, AICP
Planning Director

10.22.12

Date


Filed with Clerk



Cheryl Smith, City Clerk

10-23-12

Date

 Chairman

 Planning Director

**PLANNING BOARD
RESOLUTION No. 2012-38**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING TO THE CITY COMMISSION THE 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

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

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

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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 Resolution 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 Resolution. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

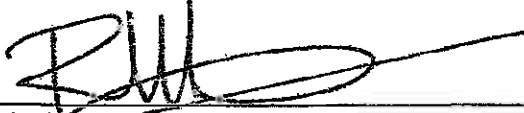
Section 4: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.


Chairman

Planning Director

Read and passed on first reading at a meeting held this 30TH Day of August, 2012.

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

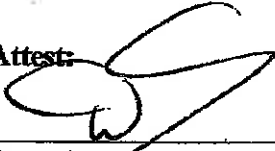


Richard Klitenick, Chairman
Key West Planning Board

9.6.12

Date

Attest:



Donald Leland Craig, AICP
Planning Director

9.9.12

Date

Filed with Clerk



Cheryl Smith, City Clerk

9/6/12

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

Select Year: 2012

The 2012 Florida Statutes

Title XXXII
REGULATION OF PROFESSIONS AND
OCCUPATIONS

Chapter 459
OSTEOPATHIC
MEDICINE

[View Entire
Chapter](#)

459.0137 Pain-management clinics.—

(1) REGISTRATION.—

(a)1. As used in this section, the term:

a. “Board eligible” means successful completion of an anesthesia, physical medicine and rehabilitation, rheumatology, or neurology residency program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association for a period of 6 years from successful completion of such residency program.

b. “Chronic nonmalignant pain” means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

c. “Pain-management clinic” or “clinic” means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

2. Each pain-management clinic must register with the department unless:

a. That clinic is licensed as a facility pursuant to chapter 395;

b. The majority of the physicians who provide services in the clinic primarily provide surgical services;

c. The clinic 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;

d. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

e. The clinic does not prescribe controlled substances for the treatment of pain;

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

g. The clinic is wholly owned and operated by one or more board-eligible or board-certified anesthesiologists, physiatrists, rheumatologists, or neurologists; or

h. The clinic is wholly owned and operated by a physician multispecialty practice where one or more board-eligible or board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who are also board-certified in pain medicine by the American Board of Pain Medicine or a board approved by the American Board of Medical Specialties, the American Association of Physician Specialists, or the American Osteopathic Association and perform interventional pain procedures of the type routinely billed using surgical codes.

(b) Each clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another clinic.

(c) As a part of registration, a clinic must designate an osteopathic physician who is responsible for complying with all requirements related to registration and operation of the clinic in compliance with this section. Within 10 days after termination of a designated osteopathic physician, the clinic must notify the department of the identity of another designated physician for that clinic. The designated physician shall have a full, active, and unencumbered license under chapter 458 or this chapter and shall practice at the clinic location for which the physician has assumed responsibility. Failing to have a licensed designated osteopathic physician practicing at the location of the registered clinic may be the basis for a summary suspension of the clinic registration certificate as described in s. 456.073(8) for a license or s. 120.60(6).

(d) The department shall deny registration to any clinic that is not fully owned by a physician licensed under chapter 458 or this chapter or a group of physicians, each of whom is licensed under chapter 458 or this chapter; or that is not a health care clinic licensed under part X of chapter 400.

(e) The department shall deny registration to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

1. Whose Drug Enforcement Administration number has ever been revoked.
2. Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction.
3. Who has been convicted of or pleaded guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03, in this state, any other state, or the United States.

(f) If the department finds that a pain-management clinic does not meet the requirement of paragraph (d) or is owned, directly or indirectly, by a person meeting any criteria listed in paragraph (e), the department shall revoke the certificate of registration previously issued by the department. As determined by rule, the department may grant an exemption to denying a registration or revoking a previously issued registration if more than 10 years have elapsed since adjudication. As used in this subsection, the term "convicted" includes an adjudication of guilt following a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.

(g) The department may revoke the clinic's certificate of registration and prohibit all physicians associated with that pain-management clinic from practicing at that clinic location based upon an annual inspection and evaluation of the factors described in subsection (3).

(h) If the registration of a pain-management clinic is revoked or suspended, the designated physician of the pain-management clinic, the owner or lessor of the pain-management clinic property, the manager, and the proprietor shall cease to operate the facility as a pain-management clinic as of the effective date of the suspension or revocation.

(i) If a pain-management clinic registration is revoked or suspended, the designated physician of the pain-management clinic, the owner or lessor of the clinic property, the manager, or the proprietor is responsible for removing all signs and symbols identifying the premises as a pain-management clinic.

(j) Upon the effective date of the suspension or revocation, the designated physician of the pain-management clinic shall advise the department of the disposition of the medicinal drugs located on the premises. The disposition is subject to the supervision and approval of the department. Medicinal drugs that are purchased or held by a pain-management clinic that is not registered may be deemed adulterated pursuant to s. 499.006.

(k) If the clinic's registration is revoked, any person named in the registration documents of the pain-management clinic, including persons owning or operating the pain-management clinic, may not, as an individual or as a part of a group, make application for a permit to operate a pain-management clinic for 5 years after the date the registration is revoked.

(l) The period of suspension for the registration of a pain-management clinic shall be prescribed by the department, but may not exceed 1 year.

(m) A change of ownership of a registered pain-management clinic requires submission of a new registration application.

(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities apply to any osteopathic physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(a) An osteopathic physician may not practice medicine in a pain-management clinic, as described in subsection (4), if the pain-management clinic is not registered with the department as required by this section. Any physician who qualifies to practice medicine in a pain-management clinic pursuant to rules adopted by the Board of Osteopathic Medicine as of July 1, 2012, may continue to practice medicine in a pain-management clinic as long as the physician continues to meet the qualifications set forth in the board rules. An osteopathic physician who violates this paragraph is subject to disciplinary action by his or her appropriate medical regulatory board.

(b) A person may not dispense any medication on the premises of a registered pain-management clinic unless he or she is a physician licensed under this chapter or chapter 458.

(c) An osteopathic physician, a physician assistant, or an advanced registered nurse practitioner must perform a physical examination of a patient on the same day that the physician prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the osteopathic physician must document in the patient's record the reason for prescribing that quantity.

(d) An osteopathic physician authorized to prescribe controlled substances who practices at a pain-management clinic is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing controlled substance pain medication. The osteopathic physician shall comply with the requirements for counterfeit-resistant prescription blanks in s. 893.065 and the rules adopted pursuant to that section. The osteopathic physician shall notify, in writing, the department within 24 hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

(e) The designated osteopathic physician of a pain-management clinic shall notify the applicable board in writing of the date of termination of employment within 10 days after terminating his or her employment with a pain-management clinic that is required to be registered under subsection (1). Each osteopathic physician practicing in a pain-management clinic shall advise the Board of Osteopathic Medicine in writing within 10 calendar days after beginning or ending his or her practice at a pain-management clinic.

(f) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following facility and physical operations requirements:

1. A pain-management clinic shall be located and operated at a publicly accessible fixed location and must:

a. Display a sign that can be viewed by the public that contains the clinic name, hours of operations, and a street address.

- b. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational 24 hours per day.
- c. Have emergency lighting and communications.
- d. Have a reception and waiting area.
- e. Provide a restroom.
- f. Have an administrative area including room for storage of medical records, supplies, and equipment.
- g. Have private patient examination rooms.
- h. Have treatment rooms, if treatment is being provided to the patient.
- i. Display a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the clinic-designated physician and the names of all physicians practicing in the clinic.
- j. If the clinic stores and dispenses prescription drugs, comply with ss. 499.0121 and 893.07.

2. This section does not excuse an osteopathic physician from providing any treatment or performing any medical duty without the proper equipment and materials as required by the standard of care. This section does not supersede the level of care, skill, and treatment recognized in general law related to health care licensure.

(g) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following infection control requirements.

1. The clinic shall maintain equipment and supplies to support infection prevention and control activities.
2. The clinic shall identify infection risks based on the following:
 - a. Geographic location, community, and population served.
 - b. The care, treatment, and services it provides.
 - c. An analysis of its infection surveillance and control data.
3. The clinic shall maintain written infection prevention policies and procedures that address the following:
 - a. Prioritized risks.
 - b. Limiting unprotected exposure to pathogens.
 - c. Limiting the transmission of infections associated with procedures performed in the clinic.
 - d. Limiting the transmission of infections associated with the clinic's use of medical equipment, devices, and supplies.

(h) Each osteopathic physician practicing in a pain-management clinic is responsible for ensuring compliance with the following health and safety requirements.

1. The clinic, including its grounds, buildings, furniture, appliances, and equipment shall be structurally sound, in good repair, clean, and free from health and safety hazards.
2. The clinic shall have evacuation procedures in the event of an emergency which shall include provisions for the evacuation of disabled patients and employees.
3. The clinic shall have a written facility-specific disaster plan which sets forth actions that will be taken in the event of clinic closure due to unforeseen disasters and shall include provisions for the protection of medical records and any controlled substances.
4. Each clinic shall have at least one employee on the premises during patient care hours who is certified in Basic Life Support and is trained in reacting to accidents and medical emergencies until emergency medical personnel arrive.

(i) The designated physician is responsible for ensuring compliance with the following quality assurance requirements. Each pain-management clinic shall have an ongoing quality assurance program that objectively and systematically monitors and evaluates the quality and appropriateness of patient care, evaluates methods to improve patient care, identifies and corrects deficiencies within the facility, alerts the designated physician to identify and resolve recurring problems, and provides for opportunities to improve the facility's performance and to enhance and improve the quality of care provided to the public. The designated physician shall establish a quality assurance program that includes the following components:

1. The identification, investigation, and analysis of the frequency and causes of adverse incidents to patients.
2. The identification of trends or patterns of incidents.
3. The development of measures to correct, reduce, minimize, or eliminate the risk of adverse incidents to patients.
4. The documentation of these functions and periodic review no less than quarterly of such information by the designated physician.

(j) The designated physician is responsible for ensuring compliance with the following data collection and reporting requirements:

1. The designated physician for each pain-management clinic shall report all adverse incidents to the department as set forth in s. 459.026.
2. The designated physician shall also report to the Board of Osteopathic Medicine, in writing, on a quarterly basis, the following data:
 - a. The number of new and repeat patients seen and treated at the clinic who are prescribed controlled substance medications for the treatment of chronic, nonmalignant pain.
 - b. The number of patients discharged due to drug abuse.
 - c. The number of patients discharged due to drug diversion.
 - d. The number of patients treated at the pain clinic whose domicile is located somewhere other than in this state. A patient's domicile is the patient's fixed or permanent home to which he or she intends to return even though he or she may temporarily reside elsewhere.

(3) INSPECTION.—

(a) The department shall inspect the pain-management clinic annually, including a review of the patient records, to ensure that it complies with this section and the rules of the Board of Osteopathic Medicine adopted pursuant to subsection (4) unless the clinic is accredited by a nationally recognized accrediting agency approved by the Board of Osteopathic Medicine.

(b) During an onsite inspection, the department shall make a reasonable attempt to discuss each violation with the owner or designated physician of the pain-management clinic before issuing a formal written notification.

(c) Any action taken to correct a violation shall be documented in writing by the owner or designated physician of the pain-management clinic and verified by followup visits by departmental personnel.

(4) RULEMAKING.—

(a) The department shall adopt rules necessary to administer the registration and inspection of pain-management clinics which establish the specific requirements, procedures, forms, and fees.

(b) The Board of Osteopathic Medicine shall adopt rules setting forth training requirements for all facility health care practitioners who are not regulated by another board.

(5) PENALTIES; ENFORCEMENT.—

(a) The department may impose an administrative fine on the clinic of up to \$5,000 per violation for violating the requirements of this section; chapter 499, the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., the Comprehensive Drug Abuse Prevention and Control Act; chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act; or the rules of the department. In determining whether a penalty is to be imposed, and in fixing the amount of the fine, the department shall consider the following factors:

1. The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain-management clinic's actions or the actions of the osteopathic physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated.

2. What actions, if any, the owner or designated osteopathic physician took to correct the violations.

3. Whether there were any previous violations at the pain-management clinic.

4. The financial benefits that the pain-management clinic derived from committing or continuing to commit the violation.

(b) Each day a violation continues after the date fixed for termination of the violation as ordered by the department constitutes an additional, separate, and distinct violation.

(c) The department may impose a fine and, in the case of an owner-operated pain-management clinic, revoke or deny a pain-management clinic's registration, if the clinic's designated osteopathic physician knowingly and intentionally misrepresents actions taken to correct a violation.

(d) An owner or designated osteopathic physician of a pain-management clinic who concurrently operates an unregistered pain-management clinic is subject to an administrative fine of \$5,000 per day.

(e) If the owner of a pain-management clinic that requires registration fails to apply to register the clinic upon a change of ownership and operates the clinic under the new ownership, the owner is subject to a fine of \$5,000.

(6) EXPIRATION.—This section expires January 1, 2016.

History.—s. 8, ch. 2010-211; s. 7, ch. 2011-141; s. 33, ch. 2012-160.

**Backup Information
Ordinances from
Florida Municipalities**

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

Clinic, and any place of worship, child care center, and educational center, measured from the nearest point of one (1) facility to the nearest point of the other facility in a straight line.

(h) A Pain Management Clinic shall provide a minimum of one (1) parking space per ten (10) gross square feet of customer waiting area, including the lobby and seating area. The business shall provide a minimum of one (1) parking space per two hundred (200) gross square feet of the remainder of the building.

(i) Notwithstanding Subsection 39-293(c), Pain Management Clinics are prohibited from having any outdoor seating areas, queues, or customer waiting areas. All activities of the Pain Management Clinic, including sale, display, preparation, and storage, shall be conducted entirely within a completely enclosed building.

(j) With the exception of Subsections (g) and (h), all Pain Management Clinics legally in existence prior to the effective date of this section shall comply with the requirements herein within sixty (60) days of the effective date of this section. Any Pain Management Clinic legally in existence prior to the effective date of this section, but now in violation of its provisions due to the Pain Management Clinic's failure to meet the requirements of Subsections (g) and (h), shall be considered a legal nonconforming use for a period of one (1) year from the effective date of this section. After the one (1) year period of time, such nonconforming use shall be removed or discontinued.

(k) If at any time the County determines that a Pain Management Clinic is operating in any manner that is inconsistent with, or contrary to, the provisions of this chapter or any other applicable code or statute, the County may revoke the Certificate of Use through the process outlined in Section 39-19

ORDINANCE NO. 12-14

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, FOR THE LICENSING AND REGULATION OF PAIN MANAGEMENT CLINICS AS DEFINED HEREIN; PROVIDING FOR AUTHORITY; PROVIDING FOR LEGISLATIVE FINDINGS OF FACT; PROVIDING FOR THE INTENT AND PURPOSE; PROVIDING FOR A DEFINITION OF TERMS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR INSPECTIONS; PROVIDING FOR REGULATION OF PAIN MANAGEMENT CLINICS; PROVIDING FOR REGISTRATION FOR A PAIN MANAGEMENT CLINIC PERMIT; PROVIDING FOR AN APPLICATION PROCESS; PROVIDING FOR PROBATION AND REVOCATION OF PERMIT; PROVIDING FOR VIOLATIONS; PROVIDING FOR SERVICE OF NOTICE AND PUBLIC RECORDS; PROVIDING FOR BOUNDARIES; PROVIDING FOR REPEAL OF CONFLICTING LAWS; PROVIDING FOR ENFORCEMENT AND PUNISHMENT FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR CODIFICATION.

RECEIVED
TALLAHASSEE, FLORIDA
OFFICE OF THE
CLERK OF THE
BOARD OF COUNTY
COMMISSIONERS

2012 APR -2 AM 9:39

FILED

WHEREAS, Manatee County has broad Home Rule powers granted by the Florida Constitution and Chapter 125, Fla. Stat. to protect the public health, safety, and welfare of the citizens, residents, and businesses of Manatee County; and

WHEREAS, the Broward County Florida Grand Jury issued an interim report entitled "The Proliferation of Pain Clinics in South Florida" which established the following facts: (i) dealers and users have shifted their efforts from acquiring illegal drugs to the diversion of legal prescription drugs to illegal uses; (ii) it was recently reported that over 300 individuals had been arrested in Kentucky for dealing in prescription drugs obtained from South Florida; (iii) under Florida law, if the pain clinic is not physician-owned, then it is unregulated by any state agency; (iv) there is no requirement that owners and employees of pain management clinics undergo a criminal background check; (v) nearly all "pill mills" operate on a cash basis; and (vi) in 2008, an average of 13.5 deaths per day in Florida were attributed to prescription drug abuse; and

WHEREAS, the Manatee County Board of County Commissioners (the "Board") has been made aware of the problem as a result of past and recent newspaper articles published describing the proliferation of pain management clinics in South Florida, and the "pipeline" trafficking of drugs from some South Florida pain clinics to users from other states such as Georgia, North Carolina, Tennessee, Kentucky, and Ohio; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with pain management clinics is significant and could undermine the economic health of Manatee County's development and redevelopment efforts as well as the safety and well-being of its citizens, residents, and businesses; and

✓

intelligent

WHEREAS, officials with the Sheriffs' Offices in both Sarasota and Manatee Counties have also met with Drug Enforcement Agency (DEA) officials for training the local law enforcement agencies on tactics to investigate pain clinics and prescription drug abuse; and

WHEREAS, in Chapter 2009-198, Laws of Florida, the legislature recognized that pharmaceutical drug diversion hurts the State of Florida significantly in terms of lost lives, increased crime, and human misery from addiction, ballooning health care costs, and Medicare fraud; and

WHEREAS, the United States Department of Health and Human Services has released data showing prescription drug deaths are now the fourth leading cause of death in the United States; and

WHEREAS, the Florida Legislature has enacted Chapter 2010-211, Laws of Florida, that establishes a more comprehensive regulatory scheme for such pain management clinics; and

WHEREAS, it is necessary to establish a process for the registration, application, and permitting of certain pain management clinics; and

WHEREAS, the Board of County Commissioners intends to enact a permanent ordinance regulating pain management clinics; and

WHEREAS, Ch. 2011-141, Laws of Florida, was recently enacted by the State to provide a comprehensive regulatory scheme for the distribution of prescription drugs and regulating pain management clinics; and

WHEREAS, the reputation of pain management clinics suffer from the proliferation of "pill mills"; and

WHEREAS, legally prescribing controlled substances by pain management clinics is necessary for public health; and

WHEREAS, the Board believes that additional local enforcement authority is needed to supplement Chapters 2010-211 and 2011-141, Laws of Florida, in the regulation of illegitimate pain management clinics in order to protect the citizens of Manatee County; and

WHEREAS, valid patients and legitimate doctors are also victims of the current proliferation of illegal pill mill activity; and

WHEREAS, legitimate medical treatment of chronic pain is much needed and is in the best interest of the community to preserve and protect these medical services, especially in our county with an increased number of seniors suffering from painful diseases.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: A new Article I, Chapter 2-18, of the Manatee County Code of Ordinances is hereby created and known as: the “**Manatee County Pain Management Clinic Registration Ordinance**” and state as follows:

Sec. 2-18-1: Authority.

This ordinance is enacted pursuant to Section 125.66(3), Fla. Stat. (2009) and under the Home Rule powers as outlined in Chapter 125, Fla. Stat. providing for the public interest of the health, peace, safety, and general welfare of the citizens, residents, and businesses of Manatee County. This ordinance shall be known as the “**Manatee County Pain Management Clinic Registration Ordinance.**” This ordinance is the successor ordinance to Ordinance 10-73, which is now repealed.

Sec. 2-18-2: Legislative Findings of Fact.

(a) The *Whereas* clauses are incorporated herein and represent legislative findings of the Board. The Board further finds and declares that it is in the best interests of the citizens, residents, and businesses of Manatee County to enact a permanent ordinance requiring a permitting and regulatory process for pain management clinics operating, or desiring to operate, in Manatee County.

(b) In 2009, through the enactment of Section 893.055, Fla. Stat. the Legislature directed the Department of Health to establish a Prescription Drug Monitoring Program (PDMP) to track prescriptions for controlled substances dispensed by various health practitioners. The purpose of the PDMP is to prevent the practice of “doctor shopping” wherein a person illegally obtains multiple prescriptions of a controlled substance from different doctors for the purpose of illegally reselling the controlled substance.

(c) Thirty-four (34) states have a PDMP. Florida is the largest state which did not have an operational drug monitoring program to help prevent the illegal distribution of controlled substances.

(d) During the 2009 Legislative Session, in Chapter 2009-198, Laws of Florida, the Florida Legislature recognized that pain management clinics should be registered with the Florida Department of Health, and that new regulations governing same should be promulgated by the Board of Medicine and Board of Osteopathic Medicine.

(e) Through Sections 458.309(4) or 459.005(3), Fla. Stat. (2009), the Florida Legislature authorized the Board of Medicine and Board of Osteopathic Medicine to adopt new rules setting forth standards of practice for health care practitioners who practice in privately-owned pain management clinics.

(f) During the 2011 Legislative Session, a new law enacted as Chapter 2011-141 incorporated many of the draft pain management clinic rules proposed by the State Board of Medicine.

- (g) Pill Mills generate a high volume of clients and traffic and, therefore, require more stringent regulation of location and use than other medical facilities.
- (h) Some pharmacies have been operating in conjunction with “pill mills”; including those that operate on a “cash only” basis and have sales of controlled substances that exceed the industry norm.
- (i) “Pill mills” that illegally prescribe and dispense controlled substances for the treatment of pain, whether acute pain or chronic pain, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, illicit drug use and drug trafficking, undesirable and criminal behavior associated with alcohol consumption, and negative impacts on surrounding properties.
- (j) According to statistics from the Centers for Disease Control and Prevention, the death rate for prescription drugs increased 84.2%, from 7.3 to 13.4 per 100,000 population from 2003 to 2009. The greatest increase in death rate was observed for the prescription drug Oxycodone (264.6%), followed by Alprazolam (233.8%), Methadone (79.2%), Hydrocodone (34.9%), and Morphine (26.2%).
- (k) Manatee County Sheriff officials say crimes related to prescription pills have reached epidemic proportions, including an increase in burglaries involving medicine cabinets. There is also an increase in jail population because of more drug arrests.

Sec. 2-18-3: Intent and Purpose.

It is further the intent and purpose of this ordinance to promote the health and general welfare of the citizens, residents, and businesses of Manatee County through the analysis of impacts from pain management clinics, the effectiveness of existing and emerging regulatory efforts, and a thorough consideration of the criteria for the establishment and location of pain management clinics within Manatee County. It is the intent of this ordinance to regulate conduct and not to affect land use or activities protected by the First Amendment.

Sec. 2-18-4: Definitions.

- (a) *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.
- (b) *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; or (c) the pain is associated with long-term incurable or intractable medical illness or disease. It is not amenable to routine pain control methods. Patients with chronic pain may have either continuous or intermittent pain, including episodes of acute pain related to disease progression or reoccurrence.

- (c) *Code Enforcement Officer* means any designated employee or agent of Manatee County whose duty it is to enforce codes and ordinances enacted by Manatee County, or designated employee or agent of the municipalities whose duty is to enforce codes and ordinances enacted by Manatee County. Employees or agents who may be Code Enforcement Officers for purposes of this Article may include, but are not limited to, code inspectors, nuisance abatement coordinators, law enforcement officers, animal control officers, building inspectors, or fire safety inspectors. Code Enforcement Officers shall be immune from prosecution, civil or criminal, for trespass upon real property while in the discharge of said duties.
- (d) *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.
- (e) *Department* shall mean the department designated by the County Administrator to administer the temporary mandate of this ordinance, or whatever regulatory scheme is subsequently enacted by a future ordinance.
- (f) *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.
- (g) *Licensed Medical Professional* means an individual who has successfully completed a prescribed program of study in a variety of health fields and who has obtained a license or certificate indicating his or her competence to practice in that field.
- (i) *Operator* means any person on the premises of a pain management clinic who puts or keeps the business in operation or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be an operator of a pain management clinic regardless of whether that person is an owner, part owner, or licensee of the business.
- (j) *Opioids* are any morphine-like synthetic narcotic that produces the same effects as drugs derived from the opium poppy (opiates), such as pain relief, sedation, constipation and respiratory depression.
- (k) *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.
- (l) *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.
- (m) *"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 practitioner’s 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 Sections 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 County Administrator 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 which was related to, or included the distribution or illegal sale or prescription of a narcotic; and the percentage of patients of the pain management clinic residing out of state.

(n) *Permit* shall mean a certificate issued by Manatee County acknowledging the submission and accurate completion of the pain management clinic registration forms required in order to conduct business in Manatee County as a pain management clinic.

(o) *Person* means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

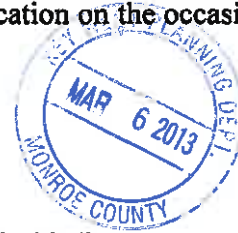
(p) *Pharmacy* shall mean the same as that term is defined in Section 465.003, Fla. Stat., as may be amended from time to time, and includes *community pharmacy*, *internet pharmacy*, and *special pharmacy*, but does not include *institutional pharmacy* or *nuclear pharmacy*, as each of those terms are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

(q) *Pill Mill* is an entity employing a doctor, a doctor, a clinic, or pharmacy that is prescribing or dispensing controlled substances inappropriately, unlawfully, or for non-medical reasons and whose operations and practices do not comply with the requirements of federal law, Florida Statutes and regulations, or this Article.

(r) *Probation* means that the permittee may receive additional supervision by the Department for a specific period of time as determined by the Department but not exceeding the two (2) year term of the permit. Such supervision may include:

- (i) shortening the reporting period of the permittee;
- (ii) increasing the information to be provided in each monthly report;
- (iii) restricting the days and hours of operation;

- (iv) making additional unannounced inspections of the premises;
- (s) *Revocation* means that the permit is terminated for the remainder of its term and the applicant may reapply at the conclusion of the revocation period.
- (t) *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 medical procedures.
- (u) *Suspension* means that the permit may be suspended by the Department for a period not to exceed three (3) months. After the suspension concludes, the permit is automatically reinstated for the remainder of its term but the permitted organization is still subject to any and all enforcement remedies e.g. Probation, Suspension, Revocation on the occasion of any subsequent violation(s) of the terms of this Article.



Sec. 2-18-5: Exemptions.

The following are exempted from this Article:

- Any clinic, facility, or office licensed by the Florida Department of Health as a facility pursuant to Chapter 395, Fla. Stat.;
- A clinic, facility, or office where the majority of patients primarily receive surgical services;
- A clinic, facility, or office that is owned by a publically 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 dollars;
- A clinic, facility, or office that is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic, facility, or office that does not prescribe or dispense controlled substances for the treatment of pain;
- A clinic, facility, or office that is owned by a corporate entity exempt from federal taxation under 26 U.S.C.S. 501(c)(3).
- Any clinic, facility, or office in which the majority of patients receive treatment for terminal illness.
- Any clinic, facility, or office in which the majority of patients receive cancer treatment.
- Any clinic, facility, or office in which the majority of patients receive hospice treatment.

Sec. 2-18-6: Inspection.

(a) An inspection shall be performed by any law enforcement officer, code enforcement officer, or employee of the department who has been designated by the County Administrator and who is authorized by the head of that department to access and inspect any facility registered under this ordinance for proof of registration, at any reasonable hour, without notice.

(b) In the event that a suspected "pill mill" or pain management clinic refuses a lawful inspection, then a law enforcement officer, code enforcement officer or employee of the department designated by the County Administrator who is authorized by the head of that department may seek all remedies available, in law or equity, including but not limited to, a criminal warrant, inspection warrant pursuant to Sections 933.20-933.30, Fla. Stat., subpoena after any required notice, or other court order from a court of competent jurisdiction.

(c) Nothing in this ordinance shall be read to limit the authority of law enforcement in any matter as relates to their authority to conduct criminal investigations.

Sec. 2-18-7: Regulation of Pain Management Clinics

(a) *Hours of operation:* The hours of operation for any pain management clinic shall be limited from 7:00 a.m. to 9:00 p.m., Monday through Saturday unless surgical procedures are being performed. It is the responsibility of the designated medical director, on-site physicians and/or the clinic owner to adhere to all requirements contained within this Article and the following applicable operational standards:

1. Maintain the routine diagnostic equipment necessary to diagnose and treat patients complaining of chronic pain.

2. Secure prescription pads so that only authorized persons may access them.

3. Provide for patient education on how to "monitor, secure, or dispose" of prescribed pain medications, as well as educational materials for distribution.

4. For the purpose of studying the patterns of health and illness and prescriptions issued within Manatee County, and to verify that a pain management clinic is operating in compliance with the requirements of Federal law, Florida Statutes and rules, 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 each patient: gender, race, age group (under 20, 20-29, 30-39, 40-49, 50-59, 60-69, 70-79, and 80 and above), and the zip code of the patient's address. In addition, the records shall include a list of the total number of prescriptions for Schedule II drugs, Schedule III drugs, and drugs containing Alprazolam, prescribed per physician licensed under Chapter 458 and 459, Florida Statutes, prescriptions given with refills, or prescriptions given in advance up to the next three (3) months, will be counted as one prescription. The monthly period of collection for the operational records described in this paragraph shall begin on the first day of the calendar month. All signature blocks for these monthly registers shall include the printed full name of the signing party, the printed title of the signing party, the printed name of the pain management clinic, the printed mailing address of the pain management clinic, and a signature of the signing party presented in a legible manner. Operational records, as described in this paragraph, shall be submitted on a monthly basis by the fifth (5th) day of every month or upon completion to the department whichever shall first occur.

Copies of this monthly register shall be made available to any code enforcement officer upon demand.

(b) *Management:* A pain management clinic shall be managed by a designated physician who is recognized as meeting the training requirements for physicians practicing in pain management clinics established by rules promulgated by the Board of Medicine and Board of Osteopathic Medicine. The designated physician shall be responsible for ensuring compliance with all federal, state and local regulations of this Article.

(c) *Ownership, Business Relationship and Employment Restrictions:* No pain management clinic shall be wholly or partially owned by, have any contractual relationship with (whether as a principal, partner, officer, member, managing member, employee, or independent contractor), or employ any person who has been convicted of a crime, has adjudication withheld for a crime, or had final administrative action taken:

(i) Involving:

(1) Any felony or misdemeanor involving the possession, sale, delivery, fraudulent obtainment, distribution, or manufacture of any controlled substance, narcotic, or prescription drug; or any misdemeanor involving a crime of dishonesty or false statement;

(2) Any violation of pain management clinic regulations of any county, city, state or government;

(3) Any administrative or other similar action in which the applicant has been denied the privilege of prescribing, dispensing, administering, supplying or selling any other state; or

(4) Any administrative or other similar action in which the state or any other state's medical action taken against the applicant's medical license as a result of dependency on drugs or alcohol.

(ii) For which:

(1) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is later, if the conviction is a misdemeanor offense;

(2) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is later, if the conviction is of a felony offense;

(3) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period;

- (4) Less than five (5) years have elapsed for any final administrative or other action.
- (iii) The fact that a conviction is being appealed has no effect on the disqualifications of the applicant under subsection (a) above.
- (d) *Payment for Prescriptions and Services:* No pain management clinic shall limit the form of payment for goods or services to "cash only." "Cash only" shall mean paper currency or coins.
- (e) *Personnel Records:* 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; (d) a copy of a current driver's license or a government issued photo identification; and (e) a set of fingerprints. In addition, personnel records shall be submitted by existing pain management clinics to the Department no later than thirty (30) days after the passage of this ordinance. New clinics shall submit their personnel records within fifteen (15) days of beginning operation. Any change in personnel (new employee), or upon arrest, adjudication or conviction in any criminal matter of any employee, an update to personnel records shall be submitted to the Department within fifteen (15) days.
- (f) *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, code enforcement officers, or any employee of the department designated by the County Administrator who is authorized by the head of that department to inspect any facility registered under this ordinance.
- (g) *Recording:* All recordings under this section may be submitted to the Department electronically by facsimile transmittal, by email transmission, or by direct submittal to a website set up by the Department for that purpose. All facsimile transmittals shall be accompanied by a cover sheet containing the sender's name, firm, address, telephone number, facsimile number, and number of pages being transmitted. The recording occurs when transmission is complete.

Sec. 2-18-8: Registration and Permit.

- (a) Beginning thirty (30) days after the effective date of this ordinance, no pain management clinic, unless otherwise exempted, shall operate in Manatee County by any means without having been issued a pain management clinic permit by the department. Upon issuance of such permit to a pain management clinic, it will be considered a Registered Pain Management Clinic.
- (b) The Department shall maintain a database of registered pain management clinics operating in Manatee County.

- (c) Proof of registration shall be prominently displayed in the common public area of the pain management clinic.
- (d) Any person with multiple physical pain management clinic locations shall secure a separate permit and registration for each business location.
- (e) Time period for granting or denying:
1. The Department shall grant a new or a renewal pain management clinic permit within thirty (30) days from the date of proper filing of an application provided the applicant is registered with the Florida Department of Health pursuant to Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor state law, as of the effective date of this ordinance.
 2. The Director of the Department shall mail a Notice of Intent to deny a pain management clinic permit within thirty (30) days from the date of its filing. The applicant may respond, in writing, to the Notice of Intent within ten (10) days of its receipt.
 3. The Director shall send a Notice of Denial based on any of the grounds set forth herein in subparagraph (g).
 4. The Notice of Denial shall be sent within twenty (20) days of mailing of the Notice of Intent to Deny if no written response to the notice is received within the ten (10) day time period. If a written response is received, the Director shall have an additional ten (10) days to consider the applicant's written response before a Notice of Denial is sent.
 5. Any applicant who receives a Notice of Denial of a pain management clinic permit may request a hearing before the Director of the Department within fifteen (15) days of the date of mailing of the Notice of Denial. The Director shall set a date for the requested hearing within thirty (30) days of receipt of the request for hearing and decide whether to uphold the denial or to grant the permit.
 6. The denial of a permit after a hearing under this section shall be the final order of the County.
- (f) *Granting of permit.* If there is no basis for denial of a pain management clinic permit pursuant to the criteria set forth herein, the department shall grant the permit, notify the applicant, and issue the permit to the applicant. Each permit shall be valid for a period of two (2) years and may be renewed within sixty (60) days of the expiration date.
- (g) *Denial of the permit.* The Director shall deny a pain management clinic permit on the basis of any one of the following grounds:
1. An applicant has submitted an application which contains material false information.
 2. An applicant has had a registration issued under either Section 458.309 or 459.005, Fla. Stat. (2009), or any successor state law, suspended or revoked or the controlled substance registration issued by the United States Department of Justice, Drug Enforcement Administration to any person prescribing, administering, or dispensing

controlled substances at the pain management clinic has been suspended, revoked, or denied renewal.

3. An applicant is not registered pursuant to Sections 458.309 or 459.005, Fla. Stat. (2009) or any successor state law.
4. Failure to allow entry to a clinic for inspection of the premises and applicable records.
5. Failure to prominently display in a public area near the front entrance copies of all state and county licenses bearing the name of the clinic owner, operator, and designated physician responsible for compliance with state and county laws.
6. The designated physician, clinic owner, or any person with authority to issue prescriptions under Florida Statutes has been convicted of a crime or had final administrative action taken against him or her.
7. If a clinic is not owned and/or operated by a physician who holds an active Florida Board of Medicine or Florida Board of Osteopathic Medicine license and who is board certified by either an American Board of Medical Specialties recognized board, the American Osteopathic Association, or the American Board of Pain Medicine, and the primary business purpose of such clinic, medical office, or practitioner is to provide a comprehensive pain medicine service.
8. The Department has other credible evidence that the applicant is in fact operating a "pill mill."
9. Allowing any person to work or volunteer at the clinic, whether paid or unpaid, who has been convicted of or plead guilty or nolo contendere to, (even if sealed or expunged) an offense that constitutes a felony for receipt, possession, delivery, distribution, selling, manufacturing or purchase of illicit drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of Section 893.03 Fla. Stat. or any other state, or the United States.
10. The facility is owned or operated by any person or has any contractual or employment relationship with a physician or other licensed health care practitioner as defined by Section 456.001(4), Fla. Stat.:
 - a) whose Drug Enforcement Administration number has ever been revoked;
 - b) whose application for a license to prescribe, dispense, supply, sell, give, compound or administer a controlled substance has been denied or revoked by any jurisdiction;
 - c) who has been convicted of or plead guilty or nolo contendere to (even if sealed or expunged) an offense that constitutes a felony for receipt, possession, delivery, distribution, selling, manufacturing or purchase of illicit drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Section 893.03, Fla. Stat., or any

other state, or the United States; or

- d) whose permit has been suspended or revoked or has had other disciplinary action taken as a result of physician or other licensed health care provider's abuse of drugs or alcohol, or from the improper prescribing, dispensing, administering, supplying, selling, giving, mixing or otherwise preparing any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Section 893.03, Fla. Stat. or any other state, or the United States.
11. The department may grant an exception to sub-sections 9 and 10 above if more than five (5) years have elapsed since the adjudication date.
 12. The fact that an appeal is pending for any items listed in sub-sections 9 and 10 above has no effect on the department's determination to grant or deny a permit.
 13. The owner or operator of a clinic whose license or permit related to the ownership or management of a medical clinic that provided pain management services for chronic pain in another jurisdiction has been denied or revoked.
 14. Failure to abide by any other provision of this Article may be considered on the department's decision to grant or deny a permit.
- (h) *Expiration of Permit.* Each permit shall remain valid for a period of two (2) calendar years from the date of issuance unless otherwise suspended or revoked. Permits may be renewed within sixty (60) days of expiration.

Sec. 2-18-9: Application.

- (a) *Application required.* Any pain management clinic operating in Manatee County and not exempt from this ordinance shall file a sworn application created by the department, which shall contain the following information:
1. Proof that the applicant has registered with the State Department of Health as of the effective date of this ordinance as required by Sections 458.309 or 459.005, Fla. Stat. (2009), or any successor State law; and
 2. A copy of the applicant's State application form, including all additional information required for the Florida Department of Health registration as referenced above; and
 3. A sworn statement attesting to the veracity and accuracy of the information provided in the application.
- (b) *Application.* Application shall be made within thirty (30) days of the effective date of this Article, or within thirty (30) days of receipt of Notice by the department whichever comes later.
- (c) *Incomplete application.* If the application for a pain management clinic permit is not properly completed, the department shall notify, in writing, the person designated for service. If

the application is not amended or supplemented within fifteen (15) days of mailing of the notice, it shall be automatically denied.

(d) Application for renewal. Application for renewal of permit can be made ninety (90) days prior to the expiration date, but no later than thirty (30) days from the expiration date.

(e) Temporary Permit. Permits issued under Ordinances 10-52 or 10-73 shall be effective for one (1) year from the date of issuance. Under no circumstances shall a Temporary Permit continue for longer than one (1) year. Application pursuant to this Article shall be made at least thirty (30) days prior to expiration of the Temporary Permit.

Sec. 2-18-10: Fees

The Board of County Commissioners is authorized to establish fees and charges associated with the permitting of a pain management clinic in Manatee County by separate resolution and adopted at any regular meeting of the Board.

Sec. 2-18-11: Probation, Suspension or Revocation.

(a) A permit for a pain management clinic may be subject to probation, suspension or revocation by order of the Department in the event that any of the following occur:

1. The clinic is no longer registered with the Florida Department of Health, pursuant to Sections 458.3265 or 459.0137, Fla. Stat., or the controlled substance registration issued by the United States Department of Justice, Drug Enforcement Administration to any person prescribing, administering, or dispensing controlled substances at the pain management clinic has been suspended, revoked, or denied renewal;

2. The designated physician, clinic owner, or any person with authority to issue prescriptions under Florida Statutes has been convicted of a crime or had final administrative action taken against him or her;

3. Failure of the clinic to notify the proper authorities of all suspected cases of criminal activity on the premises;

4. Failure to allow any law enforcement officer, code enforcement officer or employee of the department who has been designated by the County Administrator and is authorized by the head of that department to enter a clinic for inspection;

5. Failure to make or maintain adequate personnel records;

6. Failure to make or maintain adequate operational records;

7. Failure to display prominently in a common public area near their front entrance, copies of all state and county licenses, and the name of the clinic owner, operator, and designated physician responsible for compliance with state and county law;

8. A false statement of material fact is knowingly made by the clinic owner, medical director, physician, or other clinic employee or is made by same when such person has reason to know of its falsity, in any of the following areas:

- a. Personnel records;
- b. Operational records;
- c. Information submitted for reimbursement from any payment source; or
- d. Advertisement.

9. Failure to confirm the identity of each patient seen and treated for pain;

10. Failure to comply with any other provisions of this Article or any other provision of this Chapter;

11. Failure to prohibit the consumption of alcohol on the premises of a pain management clinic or outside a pain management clinic where the clinic operates, including in any parking areas, sidewalks, rights-of-ways, or neighboring properties;

12. Operation of a pain management clinic for the purpose of seeing patients or writing prescriptions during prohibited days or hours;

13. Failure to protect patient privacy rights under state or federal law.

14. An order of probation, suspension or revocation is the final order of the County and is subject to judicial review under any available procedure in any court of competent jurisdiction.

Sec. 2-18-12 Violation.

It shall be unlawful for any person to violate any provision of this Article or to operate a pain management clinic or a "pill mill" without a permit.

Sec. 2-18-13: Service of Notice and Public Records.

Any notice required under this Article shall be in writing and sent by certified mail or hand delivered to the mailing address set forth on the application for the business registration. This mailing address shall be considered the correct mailing address unless the department has been otherwise notified in writing.

Any information contained in an application under this Article is subject to the Public Records Law, Chapter 119, Fla. Stat.

Sec. 2-18-14: Boundaries.

The provisions of this Article shall apply to all territory within the legal boundaries of Manatee County, which includes all incorporated and unincorporated areas. Any municipality may opt

out of this Article by enacting a resolution to do so and submitting a conformed copy to the Department.

Sec. 2-18-15: Repeal of Conflicting Laws.

All existing ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent they conflict with this ordinance.

Sec. 2-18-16: Enforcement and Penalties.

(1) The owner or operator of a pain management clinic operating in Manatee County after the effective date of this Article and without a pain management clinic permit or an exemption therefrom, is in violation of this Article and shall be prosecuted in the same manner as misdemeanors are prosecuted. Upon conviction, he or she shall be punished by a fine not to exceed Five Hundred (\$500) Dollars, or by imprisonment in the county jail not to exceed sixty (60) days, or by both fine and imprisonment. Each day that the pain clinic operates in violation of this Article shall be considered a separate incident for purposes of prescribing penalties.

(2) In addition to the criminal penalties provided in this section, citations may also be issued to enforce any violations of this Article per provisions of Part II of Chapter 162, Fla. Stat., as may be applicable. A code enforcement officer is specifically authorized to issue a citation for each violation. Each day of any violation shall constitute a separate and distinct offense.

(3) The Board of County Commissioners may also enforce this Article by an action in equity, including injunctive or declaratory relief, in the appropriate court of competent jurisdiction, in order to prevent or abate violations of this Article. In the event that the County prevails in any such action, the County shall be entitled to an award of its costs and reasonable attorneys' fees.

SECTION 2: Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, or otherwise unenforceable, such holding shall not affect the remaining portions of this ordinance, which shall remain in full force and effect. If this ordinance or any provision thereof shall be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

SECTION 3: Effective Date. This ordinance shall become effective immediately upon filing in the office of the Department of State in Tallahassee, Florida.

SECTION 4: Codification. This ordinance shall be codified into the Manatee County Code of Ordinances by the Municipal Code Corporation as Chapter 2-18, Article I.

PASSED AND DULY ADOPTED in open session, with a quorum present and voting this
27 day March, 2012.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: [Signature]
John R. Chapple, Chairman

Attest:

R.B. SHORE
CLERK OF THE CIRCUIT COURT

By: [Signature]
Deputy Clerk



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and
correct copy of the documents on file in my office.

Witness my hand and official seal this 20th day of

MARCH 20 12

R.B. SHORE
Clerk of Circuit Court

By: [Signature] D.C.

ORDINANCE NO. 2011-___

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AN ORDINANCE OF ORANGE COUNTY, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS AND PHARMACIES; REPEALING THE MORATORIUM ON PAIN MANAGEMENT CLINICS ADOPTED BY ORDINANCE NO. 2010-17 AND CODIFIED AT SECTIONS 2-461 THROUGH 2-471, ARTICLE XIV, CHAPTER 2, ORANGE COUNTY CODE; CREATING THE "CHAD PHILLIPS ACT", A PHARMACY AND PAIN MANAGEMENT CLINIC ORDINANCE TO BE CODIFIED AT ARTICLE XIV, CHAPTER 2, ORANGE COUNTY CODE; CREATING REGISTRATION AND SUPPLEMENTAL MONTHLY REPORTING REQUIREMENTS FOR ALL PAIN MANAGEMENT CLINICS; CREATING SUPPLEMENTAL ZONING REGULATIONS FOR NEW PAIN MANAGEMENT CLINICS; CREATING SUPPLEMENTAL REGULATIONS FOR ALL PHARMACIES; PROVIDING THAT PHARMACIES AND PAIN MANAGEMENT CLINICS SHALL NOT COLOCATE; ALLOWING FOR APPLICATION FOR VARIANCE FROM THE COLOCATION BAN; CREATING A REQUIREMENT FOR ALL PHYSICIANS AND PHARMACISTS TO CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM PRIOR TO PRESCRIBING OR DISPENSING DANGEROUS DRUGS; PROVIDING DEFINITIONS; AMENDING SECTION 38-1, ZONING DEFINITIONS, TO ADD A DEFINITION FOR "PAIN MANAGEMENT CLINIC" AND TO EXCLUDE PAIN MANAGEMENT CLINIC FROM THE TERM "CLINIC"; AMENDING SECTION 38-77, ZONING USE TABLE, ADDING PAIN MANAGEMENT CLINIC AS A PERMITTED USE IN I-4 ZONE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Orange County Sheriff's Office and the Metropolitan Bureau of Investigation for the Ninth Judicial Circuit have informed the Orange County Board of County Commissioners ("Board") that a pattern of illegal drug use and distribution of certain dangerous drugs has been linked in large part to certain pain management clinics operating in and around Orange County; and

WHEREAS, certain opiate analgesic dangerous drugs, that may be safe when

48 used moderately or properly, have been shown to be particularly dangerous when over-
50 prescribed by doctors in specialized businesses that are primarily focused on treating
52 large numbers of persons who complain of any pain with very high doses of opiate drugs
54 and have been shown to be particularly dangerous when over-consumed by citizens and
56 visitors who may obtain a large number of such opiate drugs by engaging in doctor
shopping to obtain multiple prescriptions, close in time, from multiple doctors, by failing
to disclose prior recent prescriptions to subsequent doctors, and then obtaining the
prescriptions from multiple dispensing pharmacies, often by using multiple and false
identities at both medical clinics and pharmacies; and

58 **WHEREAS**, the dangerous overprescribing and excessive consumption of high
60 amounts of those dangerous opiate prescription drugs has resulted in increased addiction
62 of persons, increased crime associated with such activity, and resulted in a high number
64 of deaths in Orange County related to prescription drug abuse and has created an urgent
situation requiring immediate action to reduce the threat to the health, safety and welfare
of county citizens; and

66 **WHEREAS**, the State of Florida has implemented a Prescription Drug
68 Monitoring Program which could be an effective tool in Orange County to reduce
70 successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of
72 prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are
careful to check the database before prescribing potentially dangerous opiate drugs; and,
if reports are made to the database immediately when potentially dangerous opiate drugs
are prescribed by local physicians or dispensed by local pharmacies so that other
physicians and pharmacies can know that information, and

74 **WHEREAS**, on December 7, 2010 the Board adopted Ordinance No. 2010-17 to
76 implement a moratorium on the issuance of any new Business Tax Receipts for pain
78 management clinics, to direct County staff to analyze the effects of pain management
80 clinics on our community and prepare recommendations to better promote, protect and
improve the health, safety and welfare of the citizens of the county by local regulation of
pain management clinics, to restrict cash only operations, and to regulate hours of
operation of existing clinics through the period of the moratorium; and

82 **WHEREAS**, on July 19, 2011 Orange County Mayor Teresa Jacobs' Prescription
84 Drug Task Force (Task Force) began a series of meetings to address the serious issue of
86 prescription drug abuse in our community through law enforcement, healthcare and
pharmacies, prevention, education, and public policy; and

88 **WHEREAS**, the Task Force and County staff have identified negative adverse
90 secondary effects associated with pain management clinics that necessitate a
92 recommendation for certain changes to the Orange County code that will result in
additional substantive and zoning regulations for pain management clinics and
pharmacies in Orange County; and

94 **WHEREAS**, with the adoption of this ordinance, the Board intends to lift the
moratorium implemented in Ordinance No. 2010-17 and impose those substantive and

zoning regulations on pain management clinics and pharmacies in Orange County.

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THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY

98

COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Repeal of Moratorium Ordinance. The moratorium ordinance
100 against pain management clinics implemented by Ordinance No. 2010-17, codified at
Article XIV, Chapter 2, Orange County Code, is hereby repealed.

Section 2. Creation of Pain Management Clinic Ordinance. A Pain
102 Management Clinic Ordinance, is hereby created to read as follows, to be codified at
104 Article XIV, Chapter 2, Orange County Code.

Sec. 2-461. Title.

106

108 This ordinance shall be known as the "Chad Phillips
Act."

Sec. 2-462. Findings of Fact; Intent and Purpose.

112 (a) The Orange County Sheriff's Office and the
114 Metropolitan Bureau of Investigation for the Ninth Judicial
116 Circuit have informed the Orange County Board of County
Commissioners ("Board") that a pattern of illegal drug use
and distribution has been linked in large part to certain
118 pain management clinics operating in and around Orange
County and distributing or prescribing dangerous drugs;
and

120

122 (b) Certain opiate analgesic dangerous drugs,
that may be safe when used moderately or properly, have
124 been shown to be particularly dangerous when over-
prescribed by doctors in specialized businesses that are
126 primarily focused on treating large numbers of persons who
complain of any pain with very high doses of opiate drugs;
and have been shown to be particularly dangerous when
128 over-consumed by citizens and visitors who may obtain a
large number of such opiate drugs by engaging in doctor
130 shopping to obtain multiple prescriptions, close in time,
from multiple doctors, by failing to disclose prior recent
132 prescriptions to subsequent doctors, and then obtaining the
prescriptions from multiple dispensing pharmacies, often

134 by using multiple and false identities at both medical
136 clinics and pharmacies; and

138 (c) The dangerous overprescribing and
140 excessive consumption of high amounts of those dangerous
142 opiate prescription drugs has resulted in increased addiction
144 of persons, increased crime associated with such activity,
and resulted in a high number of deaths in Orange County
related to prescription drug abuse and has created an urgent
situation requiring immediate action to reduce the threat to
the health, safety and welfare of county citizens; and

146 (d) The State of Florida has implemented a
148 Prescription Drug Monitoring Program which could be an
effective tool in Orange County to reduce successful doctor
shopping, or multiple prescriptions, or multiple pharmacy
150 filling of prescriptions and dispensing of potentially
dangerous opiate drugs, if local physicians are careful to
152 check the database before prescribing potentially dangerous
opiate drugs; and, if reports are made to the database
154 immediately when potentially dangerous opiate drugs are
prescribed by local physicians or dispensed by local
156 pharmacies so that other physicians and pharmacies can
know that information, and

158 (e) Certain opiate analgesic drugs have been
160 shown to be particularly dangerous when over-prescribed
162 by doctors or over-consumed by citizens and visitors; and

(f) The illegal distribution of these dangerous
164 prescription drugs, increased crime associated with such
activity, and the high number of deaths in Orange County
166 relating to prescription drug abuse has created an urgent
situation requiring immediate action to reduce the threat to
168 the health, safety and welfare of county citizens; and

170 (g) On July 19, 2011 Orange County Mayor
172 Teresa Jacobs' Prescription Drug Task Force (Task Force)
began a series of meetings to address the serious issue of
174 prescription drug abuse in our community through law
enforcement, healthcare and pharmacies, prevention,
176 education, and public policy; and

178 (h) The Florida Legislature has identified
concerns regarding the increased use and abuse of
180 substances controlled by federal and/or state law and the
frequency of injury and death occurring as a result of the

182 increased availability of controlled substances and certain
184 dangerous prescription drugs via medical practitioners
operating in pain management clinics or facilities; and

186 (i) Florida Statutes require physicians and other
188 persons dispensing prescription drugs through pain
management clinics, facilities or offices, to register with the
State Department of Health in order to conduct such
business; and

190 (j) The negative adverse secondary impacts
192 associated with certain pain management clinics includes
the congregation of drug users and drug addicted persons
194 outside of pain management clinics in a manner that has a
negative effect on the willingness of residents to patronize
196 nearby business and which disturbs nearby residents all
hours of the day but particularly in the early morning and
198 late evening hours thus disrupting other businesses and
disturbing the peace and quiet of affected parts of the
200 community; and

202 (k) It is not the intent of this Ordinance to
interfere with the legal and safe prescription, dispensation,
204 or use of controlled substances. It is the excessive
distribution of a narrow class of opiate analgesic
206 prescription drugs that are Schedule II and III controlled
substances that this Ordinance seeks to regulate; and

208 (l) Under its home rule authority Orange
210 County can pass additional legislation to further regulate
pain management clinics and pharmacies as long as these
212 additional regulations are not preempted in the law and are
not inconsistent with the statutory provisions.

214 **Sec. 2-463. Definitions.**

216 For purposes of this article, the following terms,
218 whether appearing in the singular or plural form, shall have
the following meanings. All other terms used in this article
220 shall have the meaning provided in Chapter 2011-141,
Laws of Florida, as it may be amended from time to time.

222 *Acute Pain* means the normal, predicted,
224 physiological response to an adverse chemical, thermal, or
mechanical stimulus and is associated with surgery, trauma,
226 or illness. It is generally short-lived. Acute Pain responses
may vary between patients and between pain episodes

228 within an individual patient. Acute Pain episodes may be
230 present in patients with Chronic Pain.

232 *Chronic Pain* means pain, which includes one or
234 more of the following characteristics: (a) the pain persists
236 beyond the usual course of a disease that is the cause of the
238 pain; (b) the pain persists beyond the expected time for
healing from an injury or trauma that is the cause of the
pain; or (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.

240 *Controlled substance* means any substance named
242 or described in Schedules I-V of s. 893.03, Florida Statutes.

244 *Dangerous Drugs* means a controlled substance,
246 specifically an opiate analgesic, listed in Schedule II and
Schedule III, in section 893.03, Florida Statutes.

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

252 *Pain* means an unpleasant sensory and emotional
254 experience associated with actual or potential tissue
256 damage or described in terms of such damage. Categories
of pain include Acute Pain or Chronic Pain.

258 *Pain Management* means the use of
260 pharmacological and non-pharmacological interventions to
262 control a 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.

264 *Pain Management Clinic* means any privately-
266 owned clinic, facility or office, whatever its title, including
268 but not limited to a "wellness center," "urgent care
facility," or "detox center," which has at least one of the
following characteristics:

- 270 1. Where a physician practices who issues
272 prescriptions for a Dangerous Drug to more than twenty
(20) patients in a single day;

274 2. It holds itself out through a sign or
276 advertising in any medium as being in business to prescribe
 or dispense pain medication whether for Acute Pain or
 Chronic Pain;

278 3. It holds itself out through a sign or
280 advertising in any medium as being in business to provide
 services for the treatment or management of pain and
282 where the services are also accompanied with the
 prescription or dispensing of a Dangerous Drug for the
284 treatment of pain, whether Acute Pain or Chronic Pain; or

286 4. It meets the definition of Pain Management
288 Clinic in section 458.3265, Florida Statutes, as may be
 amended from time to time, or is registered as a Pain
 Management Clinic with the State.

290 Exceptions. There is an affirmative defense that a
292 business is not a Pain Management Clinic if it has at least
 one of the following characteristics:

294 1. Licensed as a hospital or other licensed
296 facility pursuant to Chapter 395, Florida Statutes, as may
 be amended;

298 2. The majority of the physicians who provide
300 services in the clinic primarily provide surgical services;

302 3. Affiliated with an accredited medical school
 at which training is provided for medical students,
304 residents, or fellows;

306 4. Does not prescribe or dispense controlled
 substance for the treatment of pain; or

308 5. Operated for the sole purpose of serving a
310 governmental entity.

312 *Pharmacist* means any person licensed pursuant to
 chapter 465, Florida Statutes, to practice the profession of
314 pharmacy.

316 *Pharmacy* means the same as that term is defined in
 section 465.003, Florida Statutes, as may be amended from
318 time to time, and includes community pharmacy, internet
 pharmacy, and special pharmacy, but does not include

320 institutional pharmacy or nuclear pharmacy, as each of
322 those terms are used in that section.

324 *Physician Primarily Engaged in the Treatment of*
326 *Pain* means a physician who prescribes or dispenses
328 Dangerous Drugs when a substantial portion of the patients
330 seen are prescribed or dispensed Dangerous Drugs for the
332 treatment of chronic pain. For purposes of this definition,
the term "substantial portion" means more than an
insignificant or incidental portion. The term "substantial
portion" does not necessarily mean a majority or
predominant amount.

334 **Sec. 2-464. Registration; Operational Regulations for
Pain Management Clinics.**

336 (a) *Registration Required.* Upon adoption of this
338 ordinance and annually thereafter, all Pain Management
340 Clinics shall register with the County by completing and
342 submitting to the County Administrator, or his/her
designee, a registration form that is obtained from that
official.

344 (b) *Persons Responsible.* A physician shall be
346 designated as responsible for complying with all
348 requirements related to registration and operation of the
350 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 2-471.

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

356 (d) *Display of licenses.* Any Pain Management
358 Clinic shall be validly registered with the State of Florida,
360 if required, and with the County and shall prominently
362 display in a public area near its main entrance copies of all
364 state licenses, County licenses, County Registration, and
Occupational License/Local Business Tax Receipt, and the
name of the owner and designated physician responsible for
compliance with state and County law. A Pain
Management Clinic shall register with the County by
completing and submitting to the County Administrator, or

366 his/her designee, a registration form that is obtained from
368 that official.

370 (e) *Controlled Substances.* The on-site sale,
372 provision, or dispensing of controlled substances at a Pain
Management Clinic shall be prohibited except as is
specifically set forth in applicable federal or state law.

374 (f) *Alcoholic beverages.* Alcoholic beverages
376 shall be prohibited from being consumed or served on the
premises, including in the parking areas, sidewalks, or
378 adjacent right-of-way.

380 (g) *Adequate inside waiting area required.* No
382 pain management clinic shall provide or allow outdoor
seating areas, queues, or customer waiting areas. All
384 activities shall be conducted within the building and
adequate indoor waiting areas shall be provided for all
386 patients and business invitees. The Pain Management
Clinic shall not direct or encourage any patient or business
388 invitee to stand, sit (including in a parked car), gather, or
loiter outside of the building where the clinic operates,
390 including in any parking area, sidewalk adjacent, right-of-
way, or neighboring property for any period of time longer
392 than that reasonably required to arrive and depart. The
Pain Management Clinic shall post a conspicuous sign
stating that no loitering is allowed on the property.

394 (h) *Operating hours.* A Pain Management
396 Clinic may operate only Monday through Friday and only
during the hours of 7:00 a.m. to 7:00 p.m. Exception - It is
398 an affirmative defense that the business was open after the
above-stated hours for a bona fide medical emergency
400 reported by an established patient who has been previously
treated at that Pain Management Clinic.

402 (i) *Monthly business records.* Each business
404 day a Pain Management Clinic shall provide to the County
Administrator or his or her designee on a monthly basis by
406 the fifth day of each calendar month a sworn summary of
certain limited information from the prior calendar month
408 that is prepared by the medical director and/or the person in
charge of prescribing the drugs that month. To the extent
410 such information is not otherwise required to be maintained
by any other law, the back-up for the required monthly
412 summary shall be maintained by the Pain Management
Clinic for at least 24 months. The monthly summary shall

414 include the following information for the previous calendar
month:

416 (1) The total number of prescriptions
written for Dangerous Drugs listed separately by each
418 physician;

420 (2) The total number of persons seen by
the Pain Management Clinic;

422 (3) The state of residence of each person
424 to whom Dangerous Drugs were prescribed or dispensed;
and

426 (4) A log of all attempts, whether
428 successful or unsuccessful, to access and review the state-
maintained Prescription Drug Monitoring Program.

430 (j) *Personnel Records; Monthly Report.* A Pain
432 Management Clinic shall maintain personnel records for all
owners, operators, employees, workers, and volunteers on
434 site at the Pain Management Clinic, and make those records
available during any inspection. The Pain Management
436 Clinic shall forward a sworn personnel record containing
items (1), (2), and (3), below, to the County Administrator,
438 or his/her designee, on a monthly basis by the fifth day of
each calendar month for the previous calendar month.
440 Personnel records shall, at a minimum, contain the
following information about each of the above-described
442 persons present for any day in the previous calendar month:

444 (1) name and title;

446 (2) current home address, telephone
number, and date of birth; and

448 (3) a state or federally-issued driver's
450 license or other identification number;

452 (4) a copy of a current driver's license or
a government issued photo identification; and

454 (5) a list of all criminal convictions (if
456 any), whether misdemeanor or felony for all persons hired
in the previous calendar month, to be updated annually.
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460 (k) *Compliance with other laws.* A Pain
Management Clinic shall at all times be in compliance with
462 all federal and state laws and regulations and the Orange
County Code.

464 **Sec. 2-465. Requirements for New Pain Management**
466 **Clinics.**

468 (a) *Intent.* It is the intent of this article that the
lawful use of any building, structure, or land existing at the
470 time of adoption of this article may be continued although
such use, building or structure does not conform with the
472 provisions of this article provided the following conditions
in the subsequent sections of this article are met.

474 (b) *Zoning and Locations.* Effective ____,
2011, any new Pain Management Clinic shall be allowed
476 only in the I-4, Industrial Zone, and shall be prohibited as a
home occupation. Any new Pain Management Clinic
478 applicant shall complete the appropriate building permit or
Use permit applications and submit these application(s) to
480 the County Building Division for review and approval prior
to issuance of any permits.

482 (c) *Separation distances.* Effective ____, 2011, a
new Pain Management Clinic shall not co-locate on the
484 same property as a preexisting Pharmacy. Furthermore, a
new Pain Management Clinic shall not operate within one
486 thousand (1,000) feet of any pre-existing pharmacy, school,
as that term is defined in sections 1002.01 or 1003.01,
488 Florida Statutes, as it may be amended, day care center or
home, or religious institution. Distance requirements shall
490 be documented by the applicant and submitted to the
Zoning Division with the application. All distance
492 requirements pertaining to Pain Management Clinics shall
be measured by drawing a straight line from the nearest
494 property line of the pre-existing use to the nearest property
line of the proposed use. Applicant may request a variance
496 from the requirements of this paragraph as provided in
section 30-43 of this Code.

498 (d) *Parking.* Any parking demand created by a
500 Pain Management Clinic shall not exceed the parking
spaces located or allocated on site, as required by the
502 County's parking regulations. Effective ____, 2011, an
applicant shall be required to demonstrate to the

504 appropriate County staff that on-site traffic and parking
506 attributable to the Pain Management Clinic will be
sufficient to accommodate traffic and parking demands
508 generated by the Pain Management Clinic, based upon a
current traffic and parking study prepared by a certified
510 professional. Traffic and parking analyses shall be
predicated in part upon traffic and parking impacts from
512 other existing pain management clinics in Florida but shall
in no case be less than one (1) space per 200 sq. ft. of gross
514 bldg. square feet. The source of any such information shall
be provided to the County for purposes of verification.
516 County staff shall be required to verify the information
contained in traffic and parking study(ies) with the
518 appropriate official(s) of the local government(s) where the
comparable information is derived. The owner of the Pain
Management Clinic shall be responsible for ensuring that
520 there is no queuing of vehicles in the public right-of-way.

522 **Sec. 2-466. Landlord Responsibility.**

524 (a) Any landlord, leasing agent, or owner of
property upon which a pain management clinic operates
526 who knows, or in the exercise of reasonable care should
know, that a Pain Management Clinic or Pharmacy is
528 operating in violation of the Orange County Code, or
applicable Florida law, including the rules and regulations
530 promulgated by the Department of Health, Board of
Medicine, or Board of Osteopathic Medicine, must prevent,
532 stop, or take reasonable steps to prevent the continued
illegal activity on the leased premises.

534 (b) Landlords who lease space to a Pain
536 Management Clinic or Pharmacy after the effective date of
this article must expressly incorporate language into the
538 lease or rental agreement stating that failure to comply with
the Orange County Code is a material breach of the lease
540 and shall constitute grounds for termination and eviction by
the landlord.

542 **Sec. 2-467. Certification Affidavit by Applicants for**
544 **Related Uses.**

546 (a) *Certification Affidavit by Applicants for*
548 *Related Uses.* Any application for a Business Tax Receipt
in all of the following categories shall be accompanied by
550 an executed affidavit certifying registration with the State
of Florida, if applicable, and Orange County as a Pain

552 Management Clinic, or certifying that the business activity
 554 does not meet the local definition of Pain Management
 556 Clinic or does not otherwise require registration as a Pain
 Management Clinic prior to the Business Tax Receipt
 application being sent to the County Zoning Division.

Local Business Tax Receipt Category Number	Description
2711	Amusement Center
3001	Physician
3005	Dentist
3011	Massage Therapist (state certified)
3012	Chiropractor
3014	Ophthalmologist
3016	Psychologist
3020	Miscellaneous professional
3100	Miscellaneous
3110	Consulting
3200	Retail store
3502	Wholesale
5000	Business

558 (b) Any applicant's application for a Business
 560 Tax Receipt and executed affidavit relating to use as a Pain
 562 Management Clinic, where applicable, shall be provided to
 the County Zoning Division at the time of zoning
 classification review of a proposed use.

564 **Sec. 2-468. Regulation of Pharmacies.**

566 (a) All Pharmacies shall be subject to the
 568 following supplemental regulations:

570 (1) *Identification Requirement.* Prior to
 572 filling or dispensing any prescription for a Dangerous
 574 Drug, for or to a person for whom verification of insurance
 576 or health plan coverage through a state-licensed insurance
 578 company has not been done, a Pharmacist or the
 Pharmacist's agent shall require and photocopy, scan, or
 580 otherwise digitally record at least one (1) form of
 582 identification of the patient for whom the medication is
 prescribed or, if a minor, the minor's parent or guardian.
 Identification shall be also obtained and recorded in the
 same manner from the person who picks up or obtains the
 Dangerous Drugs, if not the same person for whom the
 Dangerous Drugs are prescribed. Such identification shall
 consist of an original or certified copy of one of the

584 following and must include a photograph of the applicant
and have both the applicant's full name and date of birth:

- 586 a. Current driver's license;
- 588 b. Current federal or state issued
identification card;
- 590 c. United States valid Passport
or Passport Card;
- 592 d. Unexpired foreign passport
with valid, unexpired United
594 States visa affixed
accompanied by the approved
596 I-94 form documenting
applicant's most recent
598 admittance to the United
States;
- 600 e. Valid United States
Citizenship and Immigration
602 Services (USCIS) documents
(Certificate of Naturalization,
604 Certificate of Citizenship,
and/or Permanent Resident
Card);
- 606 f. Military ID or dependent card
with photograph; or
- 608 g. State or Federal government
employee identification card
610 with name and photograph
and/or physical description
612 with or without a date of
614 birth.

616 (2) *Verification of Prescription.* Prior to
filling a prescription for a Dangerous Drug about which the
618 Pharmacist has any reasonable cause to doubt the validity
of the prescription, a Pharmacist or the Pharmacist's agent
shall personally contact the prescribing physician or the
620 prescribing physician's agent in order to verify the
prescription. Based on the contact, the Pharmacist or
622 pharmacist's agent shall document in writing the date and
name of contact.

624 (3) *Records.* A Pharmacy shall keep
626 records of all prescription fills in compliance with section
893.07, Florida Statutes, for no less than two (2) years and
628 records of Dangerous Drug prescription fills shall be made
available to law enforcement or code enforcement within

630 seventy-two (72) hours of the request and which shall
632 include:

- 634 a. All information required by
636 section 893.07, Florida
638 Statutes;
- 640 b. Copies of all personal
642 identification obtained by the
644 Pharmacist in compliance
646 with this Article; and
- 648 c. If applicable, all written
650 verification records required
652 in this Article.

646 In the event that a records
648 request is made by code
650 enforcement personnel, the
652 Pharmacist shall redact all
654 identifying information of the
656 patient or person who
658 requested mediation before
660 providing the requested
662 records in compliance with
664 this section; provided
666 however, this requirement to
668 redact does not apply to
670 lawful requests by law
672 enforcement personnel.

662 (4) *Pharmacist compensation.* It shall be
664 unlawful to pay any Pharmacist a bonus, incentive
666 compensation, or reward solely for filling a prescription for
668 a specific Dangerous Drug.

666 (5) *Compliance with other laws.* A
668 Pharmacy shall at all times be in compliance with all
670 federal and state laws and regulations and the Orange
672 County Code.

672 (b) *Separation distances.* A new Pharmacy shall
674 not co-locate on the same property as a preexisting Pain
676 Management Clinic; provided, however, that an Applicant
for a new Pharmacy may request a variance from the
requirements of this paragraph as provided in section 30-43
of this Code.

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Sec. 2-469. Prescription Drug Monitoring Program.

(a) *Requirement of prescribing physician or physician's agent to check Prescription Drug Monitoring Program.* Medication shall only be prescribed on the business premises and shall only be prescribed during regular office hours. Within 24 hours prior to prescribing any Dangerous Drug to a patient, the prescribing physician or physician's agent shall access the information for the purpose of reviewing the patient's controlled drug prescription history in the Prescription Drug Monitoring Program described at section 893.055, Florida Statutes.

(b) *Requirement of pharmacist or pharmacist's agent to check Prescription Drug Monitoring Program.* Prior to dispensing any Dangerous Drug for or to a person for whom verification of insurance or health plan coverage through a state-licensed insurance company has not been done, the dispensing Pharmacy shall access the information in the Prescription Drug Monitoring Program for the purpose of reviewing the patient's controlled drug prescription history and shall report the Dangerous Drug dispensed and to whom the Dangerous Drug will be dispensed in the Prescription Drug Monitoring Program described at section 893.055, Florida Statutes.

(c) *When the Prescription Drug Monitoring Program is not available.* Compliance with the requirements of sub-sections (a) and (b) is not required before prescribing or dispensing dangerous drugs if the Prescription Drug Monitoring Program is not available, or does not reasonably respond, and three good-faith but unsuccessful attempts have first been made to access and review the state-maintained Prescription Drug Monitoring Program. A record of the dates and times of such attempts to access the state maintained Prescription Drug Monitoring Program shall be kept and maintained for 24 months. A Pain Management Clinic shall also include such log information with the daily summary record required in this ordinance.

Sec. 2-470. Applicability.

This article shall be applicable in both the unincorporated and incorporated areas of Orange County, except that this article shall not be applicable within a

724 municipality if the municipality maintains an ordinance
726 covering subject matter, activity, or conduct. To the extent
728 that this ordinance is applicable within a municipality, the
730 County and the municipality shall have concurrent
authority and jurisdiction to apply and enforce the
ordinance within the entirety of their jurisdictional
boundaries.

732 **Sec. 2-471. Penalties.**

734 Unless otherwise provided herein, violations of this
736 Article shall be punishable in accordance with Section 1-9
of the Orange County Code. In addition, the County may
738 bring any other action available at law or equity to penalize
or enjoin violations of this Article.

740 **Sec. 2-472 – Sec. 2-475. Reserved.**

742 **Section 3. Amendments to Section 38-1.** Section 38-1, Orange County Code,
the definition sections, is hereby amended by revising the definition of the term “clinic”
744 and by creating a definition for the term “Pain Management Clinic,” respectively to read
as follows, with strikethroughs indicating deletions and underlines showing additions:

746 *Clinic* shall mean an establishment where patients
748 who are not lodged overnight are admitted for examination
and treatment by one (1) person or a group of persons,
750 practicing any form of healing or health building services
to individuals, whether such persons be medical doctors,
752 chiropractors, osteopaths, chiropodists, naturopaths,
optometrists, dentists, or any such profession the practice of
which is lawful in the state, ~~excluding pain management~~
754 ~~clinics.~~

756 *Pain Management Clinic* means any privately-
758 owned clinic, facility or office, whatever its title, including
but not limited to a “wellness center,” “urgent care
760 facility,” or “detox center,” which has at least one of the
following characteristics:

762 5. Where a physician practices who issues
764 prescriptions for a Dangerous Drug to more than twenty
(20) patients in a single day;

766 6. It holds itself out through a sign or
768 advertising in any medium as being in business to prescribe
 or dispense pain medication whether for Acute Pain or
770 Chronic Pain;

772 7. It holds itself out through a sign or
 advertising in any medium as being in business to provide
774 services for the treatment or management of pain and
 where the services are also accompanied with the
776 prescription or dispensing of a Dangerous Drug for the
 treatment of pain, whether Acute Pain or Chronic Pain; or

778 8. It meets the definition of Pain Management
780 Clinic in section 458.3265, Florida Statutes, as may be
 amended from time to time, or is registered as a Pain
782 Management Clinic with the State.

784 Exceptions. A business is not a Pain Management
 Clinic if it has at least one of the following characteristics:

786 1. Licensed as a hospital or other licensed
788 facility pursuant to Chapter 395, Florida Statutes, as may
 be amended;

790 2. The majority of the physicians who provide
792 services in the clinic primarily provide surgical services;

794 3. Affiliated with an accredited medical school
 at which training is provided for medical students,
796 residents, or fellows;

798 4. Does not prescribe or dispense controlled
 substance for the treatment of pain; or

800 5. Operated for the sole purpose of serving a
802 governmental entity.

804 In all other respects, section 38-1 shall remain unchanged.

806 **Section 4. Amendment to Section 38-77.** In Section 38-77, Orange County
 Code, the Use Table, is hereby amended to add “Pain Management Clinic” to the Use
 Table with underlines showing additions as follows:

808

Uses Per Zoning Code	SIC Group	Land Use	A-1	A-2	A-R	RCE-5	RCE-2	RCE	R-1AAAA	R-1AAA	R-1AA	R-1A	R-1	R-2	R-3	Cluster
pain management clinic																

RT	RT-1	RT-2	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4	U-V (see 29)	R-L-D	UR-3	NC	NAC	NR	Conditions
										P							

810

In all other respects, section 38-77 shall remain unchanged.

812 **Section 5. Effective Date.** This Ordinance shall become effective on ____, 2011.

814

ADOPTED THIS ____ DAY OF _____, 2011.

816

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

818

By: _____
Teresa Jacobs
County Mayor

820

822

824

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

826

828

By: _____
Deputy Clerk

830

832

834

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Sarasota County, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 62 - HEALTH AND SANITATION >> ARTICLE XI. - PAIN MANAGEMENT CLINIC CODE >>

ARTICLE XI. - PAIN MANAGEMENT CLINIC CODE

Sec. 62-326. - Short Title.

Sec. 62-327. - Findings of Fact.

Sec. 62-328. - Applicability.

Sec. 62-329. - Definitions.

Sec. 62-330. - New Occupational Licenses/Local Business Tax Receipts for Pain Management Clinics.

Sec. 62-331. - Regulation of Pain Management Clinics.

Sec. 62-332. - Violations and Penalties.

Sec. 62-333. - Severability.

Sec. 62-334. - Reserved.

Sec. 62-326. - Short Title.

Chapter 62, Article XI of the Code shall be known as the "Pain Management Clinic Code."

(Ord. No. 2010-047, § 2, 6-8-2010)

Sec. 62-327. - Findings of Fact.

- (1) Sarasota County has broad home rule powers granted by the Florida Constitution to enact ordinances which are not inconsistent with general or special law for the purposes of protecting the public health, safety, and welfare of its citizens. Accordingly, because the regulation of pain management clinics by the State of Florida is incomplete, and the activities of illicit pain management clinics, also known as "pill mills," threatens the health, safety and welfare of its citizens, Sarasota County may regulate certain aspects of pain management clinic operations not reserved to the State of Florida.
- (2) In 2009, through the enactment of F.S. § 893.055, the Legislature directed the Department of Health to establish a Prescription Drug Monitoring Program (PDMP) to track prescriptions for controlled substances dispensed by various health practitioners. The purpose of the PDMP is to prevent the practice of "doctor shopping" wherein a person illegally obtains multiple prescriptions of a controlled substance from different doctors for the purpose of illegally reselling the controlled substance.
- (3) Thirty-four states have a prescription drug monitoring program. Florida is the largest state which does not have an operational drug monitoring program to help prevent the illegal distribution of controlled substances.
- (4) The PDMP was supposed to be established no later than December 1, 2010, but has not yet been implemented due to a legal action regarding the contracts for setting up this program. The Department of Health has recently rejected the contract challenge and is now moving forward with establishing the database, however the implementation timeline is still unclear. In addition, there is not a funding plan in place to ensure the database will be initially and continuously funded. Therefore, the implementation of the PDMP is still in doubt. Through

- the adoption of Resolution 2011-035, the Board of County Commissioners supports the continued implementation of the PDMP.
- (5) During the 2009 Legislative Session, in Chapter 2009-198, Laws of Florida, the Legislature recognized that pain management clinics should be registered with the Department of Health, and that new regulations governing same should be promulgated by the Board of Medicine and Board of Osteopathic Medicine.
 - (6) During the 2011 Legislative Session, HB 7095 was passed. The Governor signed the bill on June 3, 2011. HB 7095 created additional tools for prosecution, but also added multiple exemptions from registration. These additional exemptions allow many pain management clinics to escape the higher standard of care required by the Florida Statutes or rules promulgated by the Board of Medicine or Board of Osteopathic Medicine.
 - (7) Florida Statutes § 458.309(4) or 459.005(3) required the registration of Pain Management Clinics with the Department of Health by January 4, 2010. There are currently 30 pain management clinics registered with the Department of Health operating in Sarasota County.
 - (8) Through F.S. § 458.309(4) or 459.005(3), the Florida Legislature authorized the Board of Medicine and Board of Osteopathic Medicine to adopt new rules setting forth standards of practice for health care practitioners who practice in privately owned pain management clinics.
 - (9) On October 1, 2010, the Board of Osteopathic Medicine adopted its rules, 64B15-14.0051 and 64B15-14.0052, Florida Administrative Code, regulating the responsibilities of osteopathic physicians in pain management clinics. For example, the new rules provide standards of practice in pain management clinics for evaluation and diagnosis, treatment plans, periodic review, consultation, drug testing, and patient medical records. The new rules also contain provisions regarding the facility and physical operations of a clinic. Finally, the new rules provide training standards for osteopathic physicians.
 - (10) On May 17, 2011, the Board of Medicine adopted Florida Administrative Code Rule 64B8-9.0131 which provides "training requirements" that set standards for allopathic physicians practicing in pain management clinics.
 - (11) During the 2011 Legislative Session, HB 7095 incorporated many of the draft pain management clinic rules proposed by the Board of Medicine.
 - (12) The Sarasota County Sheriff's Office and Sarasota County Health and Human Services have made the Board of County Commissioners aware of illegal drug use and distribution associated with pill mills which dispense controlled substances on-site. The risk of migration to and proliferation of pill mills in Sarasota County requires immediate action by the Board of County Commissioners.
 - (13) Through the enactment of F.S. § 458.3265, the Legislature has likewise recognized the hazards associated with the proliferation of pill mills in the State of Florida. Section 458.3265 outlines physician responsibilities at such clinics and provides rulemaking authority to the Board of Medicine and Board of Osteopathic Medicine to regulate pain management clinics.
 - (14) According to a recent newspaper editorial, the Sarasota Herald-Tribune cited the following statistic from the Florida Medical Examiners Commission: prescription drugs have contributed to the deaths of about 2,500 Floridians of all ages during each of the past several years, with the numbers rising annually. Currently, there are seven Floridian deaths a day attributed to prescription drug misuse.
 - (15) Sarasota County has experienced a 22 percent increase in prescription drug deaths since 2005, which is twice that of the State rate.
 - (16) Since 2005, newborn babies born addicted to narcotics have increased 86 percent in Sarasota County and over 160 percent across the State.

- (17) The Sarasota County Addictions Receiving Facility has reported a 147 percent increase in patients admitted for prescription drug abuse since 2006.
- (18) There have been several newspaper articles and media reports illustrating a pattern of illegal drug use and distribution associated with pain management clinics in Florida, which dispense drugs on-site and are trafficked by users from other states, such as Kentucky, Ohio, Georgia, and West Virginia. The parking lots of many pain management clinics are full with vehicles with out-of-state license plates.
- (19) Some pill mills and pharmacies have operated on a "cash only" basis.
- (20) It is estimated that in the State of Florida 20 percent of the population has no health insurance or is underestimated. Additionally, F.S. § 381.026(4)(d)1., states, "A patient has the right to impartial access to medical treatment or accommodations, regardless of race, national origin, religion, handicap, or source of payment."
- (21) Some pharmacies have been operated in conjunction with pill mills, including those that operate on a "cash only" basis have sales of controlled substances that exceed the industry norm.
- (22) Pill mills that illegally prescribe and dispense controlled substances for the treatment of pain, whether acute pain, intractable pain, or chronic pain, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, illicit drug use and drug trafficking, undesirable and criminal behavior associated with alcohol consumption, and negative impacts on surrounding properties.
- (23) Many other counties and municipalities have either enacted moratoria on the issuance of business tax receipts or other licenses, or permanent ordinances to regulate the operation of pain management clinics or pharmacies which prescribe or dispense excessive amounts of controlled substances.

(Ord. No. 2010-047, § 3, 6-8-2010; Ord. No. 2011-016, § 1, 6-7-2011)

Sec. 62-328. - Applicability.

This Article shall be applicable in both the unincorporated and incorporated areas of Sarasota County, except to the extent that a municipality has adopted or adopts its own ordinance in conflict with this ordinance. To the extent that this ordinance is applicable within a municipality, the County and the municipality shall have concurrent authority and jurisdiction to apply and enforce the ordinance within the entirety of their jurisdictional boundaries.

(Ord. No. 2010-047, § 4, 6-8-2010; Ord. No. 2011-016, § 2, 6-7-2011)

Sec. 62-329. - Definitions.

For purposes of this Article, the following definitions shall apply:

- (1) *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.
- (2) *Business, Profession, or Occupation* means either a commercial enterprise, vocation requiring advanced education and training, activity or employment, engaged in for livelihood or gain. It does not include the customary religious, charitable or

educational activities of nonprofit Religious, Charitable or Educational Institutions in this County, which institutions are more particularly defined and limited as follows:

- (a) *Religious Institutions* means churches and ecclesiastical or denominational organizations or established physical places for worship in this State at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
 - (b) *Educational Institutions* means State tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Secondary Schools, the Florida Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as Educational Institutions and eligible for exemption.
 - (c) *Charitable Institutions* means only nonprofit corporations operating physical facilities in this State at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.
- (3) *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; or (c) the pain is associated with long-term incurable or intractable medical illness or disease. It is not amenable to routine pain control methods. Patients with chronic pain may have either continuous or intermittent pain, including episodes of acute pain related to disease progression or reoccurrence.
- (4) *Code Enforcement Officer* means any designated employee or agent of Sarasota County whose duty it is to enforce codes and ordinances enacted by Sarasota County, or designated employee or agent of the municipalities whose duty it is to enforce codes and ordinances of the municipalities, respectively. Employees or agents who may be Code Enforcement Officers for purposes of this Article may include, but are not limited to, code inspectors, law enforcement officers and law enforcement civilian employees, animal control officers, building inspectors, or fire safety inspectors.
- (5) *Controlled Substance* means controlled substances listed in Schedule II, Schedule III, or Schedule IV, in F.S. § 893.03, recognized as effective for pain relief, including, but not limited to, the following: buprenorphine, butorphenol, carisoprodol, codeine, fentanyl, hydrocodone, hydromorphone, levorphanol, methadone, morphine, oxycodone, and propoxyphene. Additionally, the term includes benzodiazepines, such as alprazolam, when prescribed in addition to or directly preceding or following another prescription for a controlled substance for pain relief. However, the term does not include suboxone, which contains a mixture of buprenorphine and naloxone.
- (6) *Health care physician* or *physician* means any practitioner who is subject to licensure or regulation by the Florida Department of Health under F.S. ch. 458 (physician) or F.S. ch. 459 (osteopathic physician).
- (7) *Intractable pain* means pain for which, in the generally accepted course of medical practice, the cause cannot be removed or otherwise treated.
- (8) *Occupational License* or *Local Business Tax Receipt* means the method by which Sarasota County government grants the privilege of engaging in or managing any Business, Profession or Occupation within its jurisdiction, and evidences that the Person in whose name the document is issued has complied with the provisions of

F.S. ch. 205. It does not mean any fees paid to or licenses received from any board, commission, officer or municipality for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any Occupational License imposed under the provisions of Chapter 114, Article IV of the Code of Ordinances of Sarasota County, Florida.

- (9) *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, intractable pain, or chronic pain.
- (10) *Pain management* means the use of pharmacological and nonpharmacological 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.
- (11) *Pain Management Clinic* means a privately owned 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. This definition includes the following:
- (a) A pain management clinic must have at least one of the following characteristics:
1. It employs one or more physicians licensed under F.S. ch. 458 or 459, who in a single day issues more than 20 prescriptions of a controlled substance for the treatment of pain;
 2. It holds itself out through advertising as being in business to prescribe or dispense a controlled substance for the treatment of pain;
 3. It holds itself out through advertising as being in business to provide services for the treatment of pain wherein the services are accompanied with prescription of or dispensing of a controlled substance for the treatment of pain; or
 4. It meets the definition of pain management clinic in F.S. § 458.3265, as may be amended from time to time.
- (b) A pain management clinic does not include any privately owned clinic, medical facility or office which has at least one of the following characteristics:
1. It employs physicians, the majority of whom provide services in the clinic, facility, or office; primarily provide surgical services as measured over a month time period and which limit pain management services to a period of no greater than 90 days for any patient;
 2. It is licensed as a facility pursuant to F.S. ch. 395 (hospitals, etc.), excluding outpatient facilities that provide pain management services as outlined in subsection (10)(a) above; or
 3. It does not prescribe or dispense controlled substances for the treatment of pain.
- (12) *Person* means any individual, firm, partnership, joint venture, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.
- (13) *Pharmacy* shall mean the same as that term is defined in F.S. § 465.003, 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.

- (14) *Pill mill* is 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.
- (15) *Surgical services* shall mean the practice that deals with the diagnosis and treatment of oral health, injury, deformity, and disease by in which part of the body is entered by puncture or incision and treatment takes place through manual and instrumental means.

(Ord. No. 2010-047, § 5, 6-8-2010; Ord. No. 2011-016, § 3, 6-7-2011)

Sec. 62-330. - New Occupational Licenses/Local Business Tax Receipts for Pain Management Clinics.

- (1) If a Pain Management Clinic is not registered with the Department of Health as required by F.S. § 458.309(4) or 459.005(3), and otherwise fails to meet the criteria in the Sarasota County Code, then they are ineligible for issuance or renewal of an Occupational License/Local Business Tax Receipt. As a condition to the issuance of an Occupational License/Local Business Tax Receipt, the designated physician of a pain management clinic shall execute and deliver to the Tax Collector a sworn statement certifying that the pain management clinic will be operated in compliance with the Sarasota County Code, and applicable Florida law, including rules and regulations promulgated by the Department of Health, the Board of Medicine, and the Board of Osteopathic Medicine, and applicable federal law. If, during the term of the Occupational License/Local Business Tax Receipt, the pain management clinic in fact operates contrary to the sworn statement, then same shall be subject to revocation by the Board of County Commissioners. Additionally, operation contrary to the sworn statement may constitute perjury subject to prosecution in a court of competent jurisdiction. Failure or refusal to execute and deliver the sworn statement shall result in denial of the issuance or renewal of the Occupational License/Local Business Tax Receipt.
- (2) Probation or Revocation. Consistent with the provisions of Section 114-137 of this Code, an Occupational License/Local Business Tax Receipt for a pain management clinic may be subject to probation or revocation by order of the Board of County Commissioners in the event that any of the following occur:
 - (a) The clinic is no longer registered with the Department of Health, pursuant to F.S. § 458.3265 or 459.0137, or no longer holds a current Local Business Tax Receipt, or the controlled substance registration issued by the United States Department of Justice, Drug Enforcement Administration to any person prescribing, administering, or dispensing controlled substances at the pain management clinic has been suspended, revoked, or denied renewal.
 - (b) The designated physician, clinic owner, or any person with authority to issue prescriptions under Florida Statutes has been convicted of a crime or had final administrative action taken against him or her under the same criteria as set forth in subsection (7) of this section above.
 - (c) Failure to uphold patient rights whereby deficient practice may result in significant harm or injury to, or the death of, a patient.
 - (d) Failure of the clinic to notify proper authorities of all suspected cases of criminal activity on the premises.

- (e) Failure to allow entry to a clinic for inspection.
- (f) Failure to make or maintain personnel records.
- (g) Failure to make or maintain operational records.
- (h) Failure to display prominently in a public area near their front entrance copies of all state and County licenses, and the name of the owner, operator, and designated physician responsible for compliance with state and County law.
- (i) Any statement of material fact by the clinic owner, medical director, physician, or other clinic employee which is made knowingly, or with reason to know, is false in any of the following:
 1. Application for an Occupational License/Local Business Tax Receipt;
 2. Personnel records;
 3. Operational records;
 4. Information submitted for reimbursement from any payment source; or
 5. Advertisement.
- [(j) Reserved.]
- (l) Failure to confirm the identity of each patient seen and treated for pain.
- (m) The pain management clinic fails to comply with any other provisions of this Article or
- (n) any other provision of the Sarasota County Code.
- (o) The failure to prohibit loitering on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.
- (p) The failure to post signage prohibiting loitering outside of a pain management clinic.
- (q) The failure to prohibit the cueing of vehicles on the premises on or surrounding a pain management clinic.
- (r) The failure to prohibit the consumption of alcohol on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.
- (s) The operation of a pain management clinic for the purpose of seeing patients or writing prescriptions during prohibited days or hours.
- (t) The failure to protect all patient privacy rights under state or federal law.
- (u) The failure to prohibit unlawful conduct from occurring by any person on the premises of a pain management clinic or outside of a pain management clinic where the clinic operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties.

(Ord. No. 2010-047, § 6, 6-8-2010; Ord. No. 2010-055, § 1, 9-14-2010; Ord. No. 2011-016, § 4, 6-7-2011)

Sec. 62-331. - Regulation of Pain Management Clinics.

- (1) *Inspection.* Code enforcement officers may enter and inspect those portions of a suspected pill mill open to the public to determine compliance with federal law, Florida Statutes and rules, and this Article. Additionally, code enforcement officers may enter and inspect those portions of a pain management clinic open to the public to verify compliance with federal law, Florida Statutes and rules, and this Article. Entry and inspection shall be limited to only those times where the suspected pill mill or pain management clinic is open for business and shall not include a review of patient medical records unless authorized by state or federal law. No person who operates a suspected pill mill or pain management clinic shall refuse to permit a lawful inspection of those areas open to the public by a code enforcement officer. In the

event that a suspected pill mill or pain management clinic refuses a lawful inspection, then a code enforcement officer may seek all remedies available in law or equity, including, but not limited to, a criminal warrant, inspection warrant pursuant to F.S. §§ 933.20—933.30, subpoena after any required notice, or other court order from a court of competent jurisdiction.

- (2) *Display of Licenses.* Pain management clinics shall prominently display in a public area near their front entrance copies of all state licenses, County licenses, and Occupational License/Local Business Tax Receipt, and the name of the owner and designated physician responsible for compliance with state and County law.
- (3) *Payment for Prescriptions and Services.* No pain management clinic or pharmacy shall limit the form of payment for goods or services to "cash only." "Cash only" shall mean paper currency or coins.
- (4) *Landlord Responsibility.* Any landlord which knows, or in the exercise of reasonable care should know, that a pain management clinic or pharmacy is operating in violation of the Sarasota County Code, or applicable Florida law, including the rules and regulations promulgated by the Department of Health, Board of Medicine, or Board of Osteopathic Medicine, shall have the responsibility to stop or take reasonable steps to prevent the continued illegal activity on the leased premises. Landlords who lease space to a pain management clinic must expressly incorporate the provisions of this subsection into their leases with the clinic, and must state that failure to comply with the Sarasota County Code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.
- (5) *Personnel Records.* 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: the person's name and title; a current home address, telephone number, and date of birth; a list of all criminal convictions whether misdemeanor or felony; a copy of a current driver's license or a government issued photo identification; and a set of fingerprints. Pain management clinics shall keep all personnel records complete, accurate, and up-to-date. Employees of pain management clinics shall promptly report any new arrests, withhold of adjudications, or convictions in any criminal matter to the designated record keeper at the pain management clinic so that the pain management clinic can keep all records complete, accurate, and up-to-date. Personnel records as described in this paragraph shall be submitted by existing pain management clinics to the County Administrator or his or her designee by no later than August 1, 2011. Any new clinic shall submit their personnel records to the County Administrator or his or her designee within two weeks of beginning operation. Upon any change in personnel, or upon the occurrence of an arrest, adjudication withheld, or conviction in any criminal matter of any employee of a pain management clinic, a pain management clinic shall submit an update to its personnel records to the County Administrator or the County Administrator's designee within two weeks of the change or occurrence.
- (6) *Operational Records.* For the purpose of study the patterns of health and illness and prescriptions issued within Sarasota County, and to verify that a pain management clinic is operating within the requirements of federal law, Florida Statutes and rules, and this Article, pain management clinics shall make and maintain monthly operational records for a period of one year. The operational records shall consist of a monthly register of the following information for each patient: gender; race; age group (under 20, 20—29, 30—39, 40—49, 50—59, 60—69, 70—79, and 80 and above); the initial two digits of the zip code of the patient's address; and a statement acknowledging use of the Department of Health's

Prescription Drug Monitoring Program. In addition, the records shall include a list of the total number of prescriptions for schedule II drugs, schedule III drugs, and drugs containing Alprazolam, prescribed per physician licensed under F.S. chs. 458 and 459, per month. Each physician who prescribes schedule II drugs, schedule III drugs, or drugs containing Alprazolam shall swear to the veracity of the information contained in this list. The one-month period for the purpose of collection of the operational records described in this paragraph shall begin on the first day of the calendar month. Each physician in his or her own submission shall swear that, "Under penalty of perjury, I swear that the submitted records contain true and complete information." All signature blocks for these monthly registers shall include the printed full name of the signing party, the printed title of the signing party, the printed name of the pain management clinic, the printed mailing address of the pain management clinic, and a signature of the signing party presented in a legible manner. Operational records as described in this paragraph shall be submitted on a monthly basis by the fifth day of every month or upon completion to the County Administrator or the County Administrator's designee. Copies of this monthly register shall be made available to a code enforcement officer upon demand.

- (7) *Management.* A pain management clinic shall be managed by a designated physician who is recognized as meeting the training requirements for physicians practicing in pain management clinics established by rules promulgated by the Board of Medicine and Board of Osteopathic Medicine. The designated physician shall be responsible for ensuring compliance with all federal, state, and local regulations including this Article.
- (8) *Ownership, Business Relationship, and Employment Restrictions.* No pain management clinic shall be wholly or partially owned by, have any contractual relationship with (whether as a principal, partner, officer, member, managing member, employee, or independent contractor), or employ any person who has been convicted of a crime, has adjudication withheld for a crime, or had final administrative action taken:
- (a) Involving:
1. Any felony; any misdemeanor involving the possession, sale, delivery, fraudulently obtaining, distribution, or manufacture of any controlled substance, narcotic, or prescription drug; or any misdemeanor involving a crime of dishonesty or false statement;
 2. Any violation of pain management clinic regulations of any county, city, state or government;
 3. Any administrative or other similar action in which the applicant has been denied the privilege of prescribing, dispensing, administering, supplying or selling any controlled substance by this state or any other state; or
 4. Any administrative or other similar action in which the state or any other state's medical board action taken against the applicant's medical license as a result of dependency on drugs or alcohol.
- (b) For which:
1. Less than two years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense;
 3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later

- date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period;
4. Less than five years have elapsed for any final administrative or other action.
- (c) The fact that a conviction is being appealed has no effect on the disqualifications of the applicant under subsection (a) above.
- (9) *Prescription Drug Monitoring Program (PDMP)*. All physicians licensed under F.S. chs. 458 and 459, shall, prior to the prescribing of a controlled substance, request a "patient advisory report" from the PDMP and review its contents. All physicians licensed under F.S. chs. 458 and 459, shall also document in their patient's file that they have reviewed the patient advisory report by placing a printout of the patient advisory report in each patient's file.
- (Ord. No. 2010-047, § 7, 6-8-2010; Ord. No. 2011-016, § 5, 6-7-2011)

Sec. 62-332. - Violations and Penalties.

- (1) All violations of Florida Statutes and rules promulgated by the Board of Medicine and Board of Osteopathic Medicine regarding pain management clinics, and the Zoning Regulations, Appendix A, Sarasota County Code, as may be enacted from time to time, shall also constitute violations of this Article. Investigations related to possible violations of this Article shall be conducted by code enforcement officers. Any code enforcement officer may seek all available remedies in law or equity, including, but not limited to, an administrative search warrant from a court of competent jurisdiction, a criminal search warrant from a court of competent jurisdiction, a subpoena for records once any required notice is given, or an injunction from a court of competent jurisdiction to enforce or restrict any relevant law.
- (2) All violations of this Article will be processed according to Chapter 2, Article VIII, of the Sarasota County Code of Ordinances, per the provisions of any municipal ordinances for code enforcement, as applicable, and per provisions of F.S. ch. 162, pt. I or II, as may be applicable. A code enforcement officer is specifically authorized to issue a citation for each violation. Each day of any such violation shall constitute a separate and distinct offense. Further, each failure to properly document patient information in an operational record shall constitute a separate and distinct offense.
- (3) In addition to any fine or sanction based on any violation of this ordinance or of any zoning ordinance, a pain management clinic may have its Occupational License and/or Local Business Tax Receipt revoked or placed on probation as outlined by Section 62-330
- (4) In determining the amount of a fine in a code enforcement proceeding, the Special Magistrate shall take the following factors into consideration in making a decision:
- (a) The gravity of any violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the clinic's actions or the actions of the physician;
 - (b) The number of current violations;
 - (c) The number of repeat violations;
 - (d) The actions taken by the clinic or physician to correct a violation;
 - (e) The financial benefits that the clinic derived from committing or continuing to commit the violation.
- (5) The County, or its municipalities, may also enforce this Article by action in equity, including injunctive or declaratory relief, in the appropriate court of competent jurisdiction. In the event that the County, or the municipalities, prevail in any such action, the County, or the municipalities, shall be entitled to an award of its costs and reasonable attorneys' fees.
- (6)

Any Person who operates or manages a Pain Management Clinic without an Occupational License and/or Local Business Tax Receipt, or any person who refuses a lawful inspection by a code enforcement officer, or any person who violates those provisions governing pain management clinics in the Zoning Regulations, Appendix A, Sarasota County Code, shall also be punished in the same manner as a misdemeanor as provided by general law.

(Ord. No. 2010-047, § 8, 6-8-2010; Ord. No. 2011-016, § 6, 6-7-2011)

Sec. 62-333. - Severability.

It is declared to by the intent of the Board of County Commissioners that any section, subsection, sentence, clause, phrase or provision of this ordinance is for any reason held or declared to be invalid, unconstitutional, inoperative or void, such ruling or holding shall not be so construed as to render invalid, unconstitutional, inoperative or void the remaining portions of this ordinance. If this ordinance or any provision thereof shall be held to be inapplicable to any person, property, or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

(Ord. No. 2010-047, § 9, 6-8-2010; Ord. No. 2011-016, § 7, 6-7-2011)

Sec. 62-334. - Reserved.

Editor's note—

Section 8 of Ord. No. 2011-016, adopted June 7, 2011, repealed § 62-334, which contained sunset provisions, and derived from Ord. No. 2010-047, adopted June 8, 2010.

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ARTICLE V. - PRESCRIPTION MANAGEMENT

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Sec. 86-125. - Authority.

This article is enacted pursuant to F.S. § 125.66 and under the home rule powers of the county in the interest of the health, peace, safety and general welfare of the people of Pinellas County and section 2.04(i) of the Pinellas County Charter.

(Ord. No. 10-26, § 1, 5-4-10)

Sec. 86-126. - Legislative findings of fact.

The county commission finds and declares that it is in the best interest of the general public and there exists a need to enact and extend an ordinance requiring the registration of pain management clinics operating in Pinellas County. The county commission further finds the use of this term, pain management, has negative implications and also limited application. These concerns create inconsistencies with the intent of the board, as such in order to more accurately reflect the purpose of this ordinance, the terminology referencing pain management will be amended to reference "high prescribing" health care providers.

(Ord. No. 10-26, § 2, 5-4-10; Ord. No. 11-44, § 1, 11-8-11; Ord. No. 12-19, § 1, 5-8-12)

Sec. 86-127. - Intent and purpose.

It is the purpose and intent of this article to promote the health and general welfare of the residents of Pinellas County through the continued analysis of any impacts from high prescribing health clinics, the effectiveness of existing and emerging regulatory efforts and education and prevention efforts within Pinellas County.

(Ord. No. 10-26, § 3, 5-4-10; Ord. No. 11-44, § 2, 11-8-11; Ord. No. 12-19, § 2, 5-8-12)

Sec. 86-128. - 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:

Chronic nonmalignant pain means pain unrelated to cancer, which persists beyond the usual course of the disease of the injury that is the cause of the pain for more than 90 days after surgery.

Code enforcement officer means those employees designated as code enforcement officers pursuant to F.S. § 125.69.

Department shall mean the department designated by the county administrator through the board of county commissioners to administer the mandates of this article.

High prescribing health clinic means a privately owned health care clinic, facility or office which:

- (1) Advertises in any medium for any type of pain management services; or
- (2) Employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain or who issues more than 20 prescriptions of CII and CIII controlled substances for treatment of pain in a single day; or
- (3) Prescribes controlled substance medications and is registered with the Florida Department of Health pursuant to F.S. § 458.309 or § 459.005, or any successor state law; or
- (4) Is otherwise registered with the state as a pain management clinic.

Permit shall mean a certificate issued by Pinellas County acknowledging the submission and accurate completion of the high prescribing health clinic registration forms required to be completed in order to conduct business in Pinellas County as a high prescribing health clinic.

(Ord. No. 10-26, § 4, 5-4-10; Ord. No. 11-44, § 3, 11-8-11; Ord. No. 12-19, § 3, 5-8-12)

Sec. 86-129. - Exemptions.

- (a) The following are exempted from this article:
 - (1) Any clinic licensed by the state health department as a facility pursuant to F.S. Ch. 395;
 - (2) Any clinic, facility, or office in which the majority of the patients primarily receive surgical services;
 - (3) The clinic 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 \$50,000,000.00;
 - (4) The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);
 - (5) Any clinic, facility, or office in which the majority of the patients receive treatment for terminal illness;
 - (6)

- Any clinic, facility, or office in which the majority of the patients receive cancer treatment; and
- (7) Any clinic, facility, or office in which the majority of the patients receive Hospice treatment; and
 - (8) Any clinic, facility, or office subject to Florida Administrative Code Rules: Chapter 59A4, Florida Administrative Code (Agency for Health Care Administration — Minimum Standards for Nursing Homes).
- (b) Physicians shall provide documentation supporting any claimed exemption upon request.
(Ord. No. 10-26, § 5, 5-4-10; Ord. No. 11-44, § 4, 11-8-11; Ord. No. 12-19, § 4, 5-8-12)

Sec. 86-130. - Boundaries.

All territory within the legal boundaries of the county, including all incorporated and unincorporated areas, shall be embraced by the provisions of this article.

(Ord. No. 10-26, § 6, 5-4-10)

Sec. 86-131. - Inspection.

- (a) Any law enforcement, code enforcement officer or employee of the department designated by the county administrator who is authorized by the head of that department is authorized access to inspect any facility registered under this article for proof of registration, at any reasonable hour, without notice.
- (b) Nothing in this article shall be read to limit the authority of law enforcement in any matter as relates to their authority to conduct criminal investigations.
- (c) The department shall perform inspections of any facility registered under this article to determine accuracy of the information provided by the registrant in all respects for registration issuance and throughout the registration period. During these visits, the clinic shall assist in verifying the clinic information.

(Ord. No. 10-26, § 7, 5-4-10; Ord. No. 10-45, § 1, 9-28-10)

Sec. 86-132. - Registration.

- (a) No high prescribing health clinic, unless otherwise exempted, shall operate in Pinellas County by any means without having been issued a high prescribing health clinic permit by the department. High prescribing health clinics operating as of the effective date of the ordinance from which this article derives, unless otherwise exempted or currently in possession of a high prescribing health clinic permit issued by the department, shall register with the department within 30 days of the effective date of the ordinance from which this article derives.
- (b) The department shall maintain a database of registered high prescribing health clinics operating in Pinellas County.
- (c) Proof of registration shall be prominently displayed in the common public area of the high prescribing health clinic.

(Ord. No. 10-26, § 8, 5-4-10; Ord. No. 11-44, § 5, 11-8-11; Ord. No. 12-19, § 5, 5-8-12)

Sec. 86-133. - Application.

- (a)

Application required. Any high prescribing health clinic operating in Pinellas County shall file a sworn application created by the department, which shall contain at least the following information:

- (1) Applicants that are registered with the state department of health as of the effective date of the ordinance from which this article derives as required by F.S. § 458.309 or § 459.005, or any successor state law, shall provide proof of current registration, including copy of the applicant's state application form, including all information required for the state department of health registration.
 - (2) A sworn statement by the clinic owner and medical director attesting to the veracity and accuracy of the information provided in the application.
 - (3) A typewritten, signed and notarized application that shall include the post office address of the applicant and the property owner. The application shall not be signed by an authorized agent.
 - (4) A statement including the following information:
 - i. The professional license numbers of the medical director, including DEA number;
 - ii. A list of all persons associated with the management or operation of the high prescribing health clinic whether paid or unpaid, part time or full time. The list must include, but is not limited to, all owners, operators, physicians, physicians' assistants, employees or authorized agents;
 - iii. For persons listed, the following information must be provided: title; current home address; telephone numbers and date of birth; all criminal convictions whether misdemeanor or felony; photocopy of current Florida driver's license; and
 - iv. For physicians, physicians assistants, medical director, office managers, and owners, a fingerprint card completed at the Pinellas County Sheriff's Office must be included.
 - (5) Information provided in the application shall be updated within ten days of any new person becoming associated with the high prescribing health clinic.
 - (6) That no employees of the facility have been convicted of a drug-related felony within the five-year period to the date of application.
 - (7) That the high prescribing health clinic will not knowingly employ any such convicted felons.
 - (8) A floor plan of the high prescribing health clinic showing the location and size of the waiting area, location of and size of the patient rooms and location and type of diagnostic equipment.
- (b) *Incomplete application.* If the application for a high prescribing health clinic permit is not properly completed, the department shall notify in writing the person designated for service in the application. This notification shall explain the reason the department has determined the application to be incomplete. The applicant shall have 15 days from the date of such notification to properly complete the application. Failure to respond within 15 days to a request for information necessary to complete the application shall result in a denial of the application.
- (c) Any person with multiple physical business locations shall submit a separate registration for each business location.
- (d) *Time period for granting or denying.*
- (1)

- The department shall grant a new or renewal high prescribing health clinic permit within 30 days from the date of its proper filing provided the applicant is registered with the state department of health pursuant to F.S. § 458.309 or § 459.005, or any successor state law, as of the effective date of the ordinance from which this article derives unless there exists a basis for denial of the permit.
- (2) The director or his or her designee shall mail a notice of intent to deny a high prescribing health clinic permit within 15 days from the date of its filing.
 - (3) The director shall send a notice of denial based on any of the grounds set forth herein.
 - (4) Any applicant who received a notice of denial of a high prescribing health clinic permit may request a hearing before the director of the department within 15 days of the date of the mailing of the notice of denial. The director shall set a date for the requested hearing and decide whether to maintain the denial within 15 days of receipt of the request for hearing.
- (e) *Granting of permit.* If there is no basis for denial of a high prescribing health clinic permit pursuant to the criteria set forth herein, the department shall grant the permit, notify the applicant and issue the permit to the applicant.
- (f) *Denial of permit.* The department shall deny a high prescribing health clinic permit on the basis of any one of the following grounds:
- (1) An applicant has submitted an application which contains material false information.
 - (2) An applicant has had a registration issued under either F.S. § 458.309 or § 459.005 suspended or revoked.
 - (3) An applicant has submitted an incomplete application.
 - (4) The owner or physician has been convicted of violating a pain management ordinance in any city, county or state.
 - (5) The facility is owned by or has any contractual or employment relationship with a physician:
 - i. Whose drug enforcement administration number has ever been revoked.
 - ii. Whose application for a license to prescribe, dispense or administer a controlled substance has been denied, revoked, voluntarily relinquished, or otherwise encumbered due to final disciplinary actions of the state or by any jurisdiction.
 - iii. Who has been convicted of or plead guilty within the last five years to an offense that constitutes a felony for receipt of illicit and diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V of F.S. § 893.03, or any other state, or the United States. Physicians shall not be subject to this provision if their conviction or plea occurred more than five years prior to the application.
- (g) *Application fee.* Each application for a high prescribing health clinic permit shall be accompanied by a nonrefundable \$250.00 application fee to offset the cost of processing the application. Any changes to the application fees authorized by this article shall be accomplished by resolution of the county commissioners.
- (h) *Tolling of time.* The time allotted for obtaining a high prescribing health clinic permit shall be tolled during the pendency of any final determination by the director based on a denial of a permit application.

(Ord. No. 10-26, § 9, 5-4-10; Ord. No. 10-45, §§ 2—5, 9-28-10; Ord. No. 11-44, § 6, 11-8-11; Ord. No. 12-19, § 6, 5-8-12)

Sec. 86-134. - Violation.

It shall be unlawful for any person to violate any provision of this article.

(Ord. No. 10-26, § 10, 5-4-10)

Sec. 86-135. - Registration moratorium declared.

- (a) It is the legislative determination of the county commission that the moratorium on submission of applications for issuance of permits for high prescribing health clinics as to any property located in whole or part within Pinellas County be maintained pending further review by the Board of County Commissioners no later than 60 days after the close of the 2013 Legislative Session.
- (b) High prescribing health clinics currently registered with Pinellas County may retain their status subject to their continued compliance with this ordinance as codified and applicable administrative rules. All other high prescribing health clinics shall register with Pinellas County as provided for in this ordinance.
- (c) The county commission shall receive a semi-annual report from the county administrator or designee outlining the effectiveness of the regulation of high prescribing health clinic in achieving the purpose of this ordinance.

(Ord. No. 10-26, § 11, 5-4-10; Ord. No. 10-45, § 6, 9-28-10; Ord. No. 11-44, § 7, 11-8-11; Ord. No. 12-19, § 7, 5-8-12)

Sec. 86-136. - Service of notice; public records.

- (a) Any notice required under this article shall be in writing and sent by certified mail or hand delivery to the mailing address set forth on the application for the business registration. This mailing address shall be considered the correct mailing address unless the department has been otherwise notified in writing.
- (b) Any information contained in an application under this article is subject to the public records law, F.S. § 119.

(Ord. No. 10-26, § 12, 5-4-10)

Sec. 86-137. - Penalty.

Violations of this article are punishable as provided in section 1-8 of this Code or by civil injunction filed in the Sixth Judicial Circuit Court of the State of Florida. Nothing herein shall be read to limit the authority of the law enforcement officers in their enforcement of this or any other related ordinance or law.

(Ord. No. 10-26, § 13, 5-4-10; Ord. No. 10-45, § 7, 9-28-10)

Sec. 86-138. - Permit requirements.

- (a) *Requirements.* A separate permit is required for each high prescribing health clinic location. At least one applicant for a permit shall be the medical director of the high prescribing health clinic. The applicant(s) shall be fully responsible for compliance with this section.
- (b) *Permit fee.* Each high prescribing health clinic operating in Pinellas County under this article shall pay an annual fee of \$1,500.00 to recoup the cost of maintaining this article.
 - (1) The permittee may receive a permit rate reduction equal to the application fee of \$250.00 by providing:

- i. A clear operational plan that explains the patient assessment procedures, referral opportunities discussed, pregnancy assessment procedures, and any other screening procedures conducted by the permittee. The operational plan must clearly explain how these areas are approached and must be accompanied by a copy of the valid assessment tool being used prior to prescribing pain medication; and
 - ii. Verification of user access to the Florida prescription drug monitoring program to enable patient due diligence by the physicians.
- (2) This information must accompany the notarized application packet and is subject to further verification during site visits.
- (c) *Permit renewal.* The permit required for operating a high prescribing health clinic under this article shall be valid for one year beginning upon date of issuance by the department, unless otherwise provided for in this article. If required, a renewal permit shall be issued by the department after payment of the annual application and permit fee provided the high prescribing health clinic named in the renewal application and all information on the application is in compliance with this article and applicable administrative rules.

(Ord. No. 10-45, § 8, 9-28-10; Ord. No. 11-44, § 8, 11-8-11; Ord. No. 12-19, § 8, 5-8-12)

Sec. 86-139. - Operation.

- (a) It is the responsibility of a designated medical director, on-site physicians, or the clinic owner to adhere to all requirements contained within this article and applicable administrative rules.
- (b) A permit shall be issued to the person(s) deemed the permittee(s) for the particular location provided for in the application and shall not be transferable in any manner either to another person or for another location.
- (c) The grant of a permit is expressly conditioned upon compliance with the following operational standards:
 - (1) The permit must be posted in a conspicuous place at or near the entrance to the high prescribing health clinic so that it may be easily read at any time.
 - (2) The high prescribing health clinic shall not limit the form of payment for services or prescriptions to cash only.
 - (3) The high prescribing health clinic shall be operated by a medical director or lead physician who is a licensed physician in the state.
 - (4) The hours of operation of the high prescribing health clinic shall be limited to 7:00 a.m. to 9:00 p.m. Monday through Sunday.
 - (5) The high prescribing health clinic shall maintain the routine diagnostic equipment to diagnose and treat patients complaining of chronic pain.
 - (6) The facility shall secure prescription pads so that only authorized persons may access them. All prescription pads shall contain the name of the high prescribing health clinic and the high prescribing health clinic permit number.
 - (7) The registered clinic shall be required to submit an accurate, semi-annual update containing the names of each owner, physician, employee, consultant, and agent, changes in facility, and changes in operation and services. These updates are to be completed on available county forms and mailed, faxed or hand delivered to the department by June 15. Failure to provide the updated information within the specified timeframes is a violation of this article.
 - (8) Upon the determination of the department, if a meeting is requested, the clinic owner shall coordinate to meet within 15 business days of the request.

- (9) A physician or licensed medical professional is required to be on site at all times during operating hours.
 - (10) All permitted high prescribing health clinics shall request a "patient advisory report" from the Prescription Drug Monitoring Program (PDMP) and review its contents prior to prescribing a controlled substance.
 - (11) All permitted high prescribing health clinics, shall document in their patient files proof that they reviewed the patient advisory report by including a copy of the report in the patient's file.
 - (12) All high prescribing health clinics must adhere to all codes set forth by code enforcement. High prescribing health clinics must provide ample parking for their patient flow and patient related vehicular traffic must not interfere with the normal flow of traffic on the streets adjacent to or influenced by the ingress and or egress to the parking area of the clinics.
 - (13) The high prescribing health clinic shall educate patients on the dangers and proper use of prescription pain medication, securing the medication to avoid diversion, and how to dispose of unused medication. Additionally, patients are to receive educational materials as provided for distribution.
 - (14) The high prescribing health clinic shall medically determine pregnancy status of female patients prior to prescribing prescription pain medication, and will educate the patient on the dangers of these medications when taken during pregnancy.
 - (15) The high prescribing health clinic shall perform an accepted patient assessment to determine possible addiction and mental health needs for referral prior to prescribing pain medication.
- (c) A violation of this article or the administrative rules created under this article shall be considered "operation of a non-compliant high prescribing health clinic" for purpose of enforcement.
- (d) *Incurable violations.*
- (1) Providing false information in statements or reports required to be filed with the department.
 - (2) Providing false information on application to Pinellas County including materially false omissions.
 - (3) Refusing to allow for inspection of the clinic by a code enforcement officer, law enforcement officer, or any other person authorized to enforce ordinance violations in Pinellas County at any time the clinic is open or occupied.
 - (4) Failing to update the high prescribing health clinic application as necessary to maintain its accuracy or assure continued compliance with the requirements of this article and applicable administrative rules.
- (e) *Suspension/revocation.*
- (1) A conviction of violation of the Pinellas County high prescribing health clinic ordinance or commission of an incurable violation created under this article shall constitute grounds for a suspension of the permit holder's high prescribing health clinic permit.
 - (2) A suspension shall be for a period of three months.
 - (3) Subsequent violations of the Pinellas County high prescribing health clinic ordinance or commission of an incurable violation created under this article shall constitute grounds for a revocation.
 - (4) Any revocation of a permit issued under these rules shall be for a minimum period of three years and shall require a new application for reinstatement.

- (5) The permit holder shall surrender the permit to the department prior to the first day of the period of suspension or revocation of the permit.
- (f) *Effective date of suspension.* The period of suspension shall begin 20 days after the date the department mails the notice of suspension to the permit holder or on the date the permit holder delivers the permit to the department; whichever happens first. The department shall provide the basis for suspension in the notice to the permit holder.
- (g) *Right to appeal.* The permit holder shall have the right to request a hearing before the department. The request for hearing must be made prior to the effective date of the suspension or revocation. The hearing shall be commenced within at least 30 days of the date of the request for the hearing. During the pendency of the hearing the period of suspension or revocation shall be stayed until a final decision is issued by the department.
- (h) The permit holder may appeal any final decision to the Sixth Judicial Circuit Court of the State of Florida.

(Ord. No. 10-45, § 1, 9-28-10; Ord. No. 11-44, § 9, 11-8-11; Ord. No. 12-19, § 9, 5-8-12)

Sec. 86-140. - Administrative rules.

The department shall promulgate additional rules and forms deemed necessary to carry out the purposes of this article which shall include provisions consistent with the procedural requirements set forth in this article for:

- (a) Suspension of a high prescribing health clinic permit for violating provisions of this article or applicable administrative rules.
- (b) Reporting requirements for high prescribing health clinic.
- (c) Operational guidelines for high prescribing health clinic.
- (d) Other rules as necessary to achieve the purposes of this article consistent with the purposes of this article as designated by the board of county commissioners.

(Ord. No. 10-45, § 1, 9-28-10; Ord. No. 11-44, § 1, 11-8-11; Ord. No. 12-19, § 10, 5-8-12)

FOOTNOTE(S):

⁽¹⁰³⁾ **Editor's note**— Ord. No. 11-44, adopted November 8, 2011, changed the title of Article V from *Pain Management Clinic to Prescription Management*. ([Back](#))