

COMMISSION AGENDA

5.4.10 #3

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Recommendation to Adopt Proposed Ordinance Relating to
Pain Management Clinics

DATE: May 4, 2010

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS ADOPT THE ATTACHED PROPOSED ORDINANCE RELATING TO PAIN MANAGEMENT CLINICS.

DISCUSSION: Recent news articles documenting efforts by South Florida communities to control the spread of Pain Management Clinics has come to the attention of the Board of County Commissioners. There is evidence that the northward migration of such clinics into Pinellas County poses a threat of an increase in injuries caused to citizens of the County as a result of increased access to prescription drugs dispensed by these businesses. Similarly, the State of Florida has noticed an overall state-wide increase in these businesses and negative health impacts resulting from this proliferation. The State is in the process of taking action to address these concerns.

Until such State efforts are taken and the potential efficacy of those efforts under locally identified conditions can be assessed, the Board deems it appropriate to preserve the status quo with respect to any increase in Pain Management Clinics by way of a temporary moratorium. It is appropriate that the Board of County Commissioners examine this concern independently, and this Ordinance establishes a task force of limited duration for that purpose.

This Ordinance will require existing Pain Management Clinics that are on the State registry to seek and receive authorization to operate from a County department designated by the County Administrator and prohibits the authorization of new Pain Management Clinics during the pendency of the moratorium. The Ordinance also creates a Task Force to examine the impact of these businesses in the County. Thirty (30) days after the effective date of this Ordinance, no Pain Management Clinic will be allowed to operate without County authorization.

JLB:CEB:elb

Attachment

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ORDINANCE NO. 10-__

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING ARTICLE V OF CHAPTER 86 OF THE PINELLAS COUNTY CODE BY ADDING SECTIONS 86-125 THROUGH 86-140; PROVIDING A TITLE TO BE NAMED "PAIN MANAGEMENT CLINIC"; PROVIDING FOR DEFINITION OF TERMS; PROVIDING FOR LEGISLATIVE FINDINGS OF FACT; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR BOUNDARIES; PROVIDING FOR INSPECTIONS; PROVIDING FOR REGISTRATION PROCESS; CREATING A PAIN MANAGEMENT CLINIC TASK FORCE; PROVIDING FOR PURPOSE OF THE TASK FORCE; PROVIDING FOR MEETINGS; PROVIDING FOR STAFFING; DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A PAIN MANAGEMENT CLINIC; PROVIDING FOR A REVIEW PERIOD; PROVIDING FOR SERVICE OF NOTICE; PROVIDING FOR PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County Commission has recently been made aware by Pinellas County law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with some Pain Management Clinics in Pinellas County which dispense narcotic drugs on-site; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with such clinics is significant and could undermine the economic health of the County's development and redevelopment efforts; and

WHEREAS, the Florida Legislature holds identical concerns as the Board of County Commissioners regarding the increased use and frequency of injury occurring through use of Pain Management Clinics by persons obtaining prescription drugs for improper purposes; and

WHEREAS, the Florida Legislature enacted the Prescription Drug Monitoring Act, §893.055 Fla. Stat. (2009), in order to address these concerns; and

WHEREAS, the Act requires physicians and other persons dispensing prescription drugs through Pain Management Clinics, facilities or offices to register with the State Department of Health in order to continue to conduct business; and

WHEREAS, the County staff is in the process of analyzing the effects of Pain Management Clinics and preparing recommendations which will better promote the health, safety, morals and general welfare of the County; and

WHEREAS, the Board of County Commissioners has determined that requiring registration by businesses operating as Pain Management Clinics within the jurisdiction of Pinellas County along with a temporary moratorium on the opening of new Pain Management Clinics will provide appropriate interim oversight of the proliferation of these establishments; and

WHEREAS, while County staff is undergoing its analysis, and in order to prevent the occurrence during this period of uses which are incompatible with the intent of this Ordinance, it is necessary to establish a moratorium which prevents the granting of permits for Pain Management Clinics which dispense controlled substances on-site in Pinellas County; and

WHEREAS, it is not the intent of this moratorium to interfere with legitimate medical clinics nor the legal use of controlled substances; and

WHEREAS, the Board of County Commissioners finds and declares a need to temporarily suspend the issuance of permits for Pain Management Clinics until such time that appropriate regulations can be adopted in order to best assess whether the County should maintain its current regulations in connection with Pain Management Clinics.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, that:

Section 1: Authority.

This Ordinance is enacted pursuant to chapter 125.66, Florida Statutes, 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.

Section 2: 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 an ordinance requiring the registration of Pain Management Clinics operating in Pinellas County. The County Commission further finds that in order for the County staff to examine and make recommendations to the County Commission as to the criteria to be considered by the County Commission for the establishment of Pain Management Clinics regulation it is necessary to place a moratorium on registering Pain Management Clinics not registered within thirty (30) days of enactment of this Ordinance.

Section 3: Intent and Purpose.

It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents of Pinellas County through the analysis of any impacts from Pain

Management Clinics, the effectiveness of existing and emerging regulatory efforts and through consideration of criteria for the location of Pain Management Clinic uses within Pinellas County.

Section 4: Definitions.

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 ninety (90) days after surgery.

Code enforcement officer means those employees designated as code enforcement officers pursuant to Section 125.69, Fla. Stat. (2009).

Department shall mean the Department designated by the County Administrator through the Board of County Commissioners to administer the mandates of this Ordinance.

Pain Management Clinic means a privately owned Pain Management Clinic, facility or office which advertises in any medium for any type of pain management services, or 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 Sec. 458.309 or Sec. 459.005, Fla. Stat. (2009). A physician 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.

Permit shall mean a certificate issued by Pinellas County acknowledging the submission and accurate completion of the Pain Management Clinic Registration forms required to be completed in order to conduct business in Pinellas County as a Pain Management Clinic.

Section 5: Exemptions.

Any clinic licensed by the State Health Department as a facility pursuant to chapter 395, Florida Statutes, is exempted from the provisions of this Ordinance.

Section 6: Boundaries.

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

Section 7: Inspection.

(a) Any law enforcement or code enforcement officer is authorized access to inspect any facility registered under this Ordinance for proof of registration, at any reasonable hour, without notice.

(b) 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.

Section 8: Registration.

(a) Thirty (30) days after the effective date of this Ordinance, no Pain Management Clinic, unless otherwise exempted, shall operate in Pinellas County by any means without having been issued a Pain Management Clinic permit by the Department.

(b) The Department shall maintain a database of registered Pain Management Clinics operating in Pinellas County.

(c) Proof of registration shall be prominently displayed in the common public area of the Pain Management Clinic.

Section 9: Application.

(a) *Application required.* Any Pain Management Clinic operating in Pinellas County 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 required by Sec. 458.309 Fla. Stat. (2009);
- (2) Proof that the applicant is or has been conducting business in Pinellas County as a Pain Management Clinic at the registered location prior to the effective date of this Ordinance; and
- (3) A sworn statement attesting to the veracity and accuracy of the information provided in the application.

(b) *Application fee.* Each application for a Pain Management Clinic permit shall be accompanied by a nonrefundable fee which shall be set by resolution of the Board of County Commissioners. The resolution shall include a late fee for applications filed after the date of the expiration of a permit. Calculation of the appropriate fee shall be based on the cost to Pinellas County for implementing and enforcing the provisions of this Ordinance.

(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 in the application. The applicant then has fifteen (15) days from the date of such notice to properly complete the application. Failure to respond within thirty (30) days to a request for information necessary to complete the application shall result in a denial of the application.

(d) Any person with multiple physical business locations shall submit a separate registration for each business location.

(e) *Time period for granting or denying.*

(1) The Department shall grant a new or renewal Pain Management Clinic permit within fifteen (15) days from the date of its proper filing provided:

a. The Applicant is registered with the State Department of Health pursuant to F.S. ch. 458.309.

b. The applicant's Pain Management Clinic has been operational at the described location prior to the effective date of this Ordinance.

(2) The director or his or her designee shall mail a notice of intent to deny a Pain Management Clinic permit within fifteen (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 in subsection (c) or e(1) of this section.

(4) Any applicant who received 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 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 fifteen (15) days of receipt of the request for hearing.

(f) *Granting of permit.* If there is no basis for denial of a Pain Management Clinic permit pursuant to subsection (c) or e(1) of this section, the Department shall grant the permit, notify the applicant and issue the permit to the applicant upon payment of the appropriate annual fee.

(g) *Denial of 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 Sec. 458.309 Fla. Stat (2009) suspended or revoked.
- (3) An applicant is not registered pursuant to Sec. 458.309 Fla. Stat (2009).
- (4) An applicant location was not operational prior to the effective date of this Ordinance.

Section 10: Violation.

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

Section 11: Creation of Pain Management Clinic Task Force.

The Pain Management Clinic Task Force is hereby established by the Board of County Commissioners.

Section 12: Purpose of the Task Force.

(a) The purpose of the Task Force is to review, research and make recommendations to the Board of County Commissioners regarding the issues involved with Pain Management Clinics.

(b) The goals of the Task Force shall be to review and make recommendations to the Board of County Commissioners regarding the following:

- (1) The feasibility of maintaining or extending a moratorium on certain businesses which dispense prescription drugs.
- (2) The formulation of a specific definition of "pain clinic".
- (3) The feasibility of creating an ordinance prohibiting new pain management clinics in certain zoning districts.
- (4) The feasibility of creating an ordinance regulating and permitting new pain management clinics in the County.
- (5) The empowerment of municipal and county staff to enforce State legislation requiring registration and inspection of clinics which advertise pain management services.
- (6) The enforcement of more stringent parking requirements for new medical offices.

- (7) A review of the fiscal impact of enforcing this Ordinance in the incorporated and unincorporated areas of Pinellas County.
- (8) Other issues or concerns that arise during discussion at meetings of the Task Force.

(c) The Task Force shall be appointed by the Pinellas County Board of County Commissioners and shall consist of the following categorical representation:

- (1) A representative of the Pinellas County Board of County Commissioners;
- (2) A representative of the Council of Mayors;
- (3) A representative of the Substance Abuse Advisory Board;
- (4) A representative of the Pinellas County Sheriff's Office;
- (5) A representative of the Police Standards Council;
- (6) A pharmacist residing in Pinellas County;
- (7) A licensed physician residing in Pinellas County;
- (8) A representative from the State Attorney's Office;
- (9) A representative from the Public Defender's Office;
- (10) A representative from the Pinellas County School Board;
- (11) A drug counselor residing in Pinellas County;
- (12) A citizen representative familiar with the impacts of issues associated with Pain Management Clinics on individuals and their families; and
- (13) A Pain Management Clinic representative.

Section 13. Meetings.

The Task Force shall hold no fewer than five (5) meetings and shall issue a draft report by November 30, 2010.

Section 14. Staffing.

The Task Force shall be staffed by:

(a) An Assistant County Attorney designated by the County Attorney; and

(b) Staff from the Department or as otherwise designated by the County Administrator.

Section 15. Review Period.

The Task Force shall report its final recommendations to the Board of County Commissioners by January 31, 2011.

Section 16. Registration Moratorium Declared.

(a) The County Commission hereby imposes a moratorium on submission, processing and issuance of permits for Pain Management Clinics as to any property located in whole or in part within the County for a period of one hundred and eighty (180) days which period shall begin thirty (30) days after the effective date of this Ordinance. The moratorium may be extended in order to consider the findings of the Task Force.

(b) Applications pending with the Department on the effective date of the moratorium shall be processed as provided for in this Ordinance.

Section 17. Service of Notice; Public Records.

(a) Any notice required under this Ordinance 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 Ordinance is subject to the public records law, F.S. Chapter. 119.

Section 18. Penalty.

Violations of this Ordinance are punishable with a civil fine as provided in section 1-8 of this Code.

Section 19. Area Embraced.

The provisions of this Ordinance shall apply to all the municipalities and unincorporated areas within Pinellas County.

Section 20. Severability.

If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction,

such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

Section 21. Inclusion in the Pinellas County Code.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

Section 22. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes (2009), a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Pinellas County Board of County Commissioners within ten (10) days after enactment by the Pinellas County Board of County Commissioners and shall become effective upon filing with the Department of State.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

Attorney