

TAB 7



City of Palmetto Agenda Item

Meeting Date

Presenter: City Attorney

Department: City Attorney/Police Department

Title:

CITY OF PALMETTO EMERGENCY PAIN CLINIC MORATORIUM ORDINANCE

BACKGROUND:

In 2009, a Broward County Grand Jury issued an interim report entitled the "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) Florida is the largest state without a Prescription Drug Monitoring Program and has become a destination for traffickers, dealers and users seeking to illegally acquire prescription drugs; (iii) it was recently reported that over 300 individuals had been arrested in Kentucky for dealing in prescription drugs obtained from South Florida; (iv) under Florida law, if the pain clinic is not physician-owned, then it is unregulated by any state agency; (v) there is no requirement that owners and employees of pain management clinics undergo a criminal background check; (vi) from August 2008 to November 2009, one new pain clinic is opened in Broward and Palm Beach counties every three days; (vii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the United States; (viii) in 2008, prescription drugs were attributed to an average of 13.5 deaths per day in Florida; and (ix) pain clinics are migrating north from Broward County major metropolitan areas. The City Commission has recently been made aware by news reports that a pattern of illegal drug use and distribution has been associated with some pain management clinics in Florida, which dispense narcotic drugs on-site. The various newspapers throughout the state, including the Bradenton Herald, the Sarasota Herald Tribune, the Miami Herald, the Sun Sentinel, the Palm Beach Post, have published numerous articles in recent months describing the "pipeline" trafficking drugs from Florida pain management clinics to users from other states such as Kentucky, Tennessee, West Virginia and Ohio. The threat of illegal narcotic activity and increased crime associated with pain management clinics is significant and could undermine the economic health of the City's development and redevelopment efforts.

Ordinance No. 2010-08 is an emergency ordinance of the City Commission declaring a one year moratorium on the registration for special permits for new pain management clinics operating within the City of Palmetto after the effective date of this ordinance. The Mayor and the City Attorney's Office have reviewed other ordinances recently drafted in other counties and cities and have determined that due to the proliferation of these so called "pill mills" there is a real emergency for the City Commission to take some action to stop any further intrusions by these "clinics" into the City of Palmetto.

DISCUSSION:

Pursuant to F.S. Section 166.041(3)(b), the City Commission may enact or amend any ordinance with a waiver of the Notice requirements by a 2/3 vote of the membership. It is important to note that the normal notice provisions have not fully been observed in this instance since time is crucial to place a moratorium on new pain clinics operating in the City before the new state law goes into effect on October 1, 2010. In order for this motion to pass under the emergency notice procedures, it would require a vote of 4 Commission members. If enacted under the emergency enactment procedures, the ordinance would be effective when a copy has been accepted in the mail by special delivery certified mail to the Department of State. This may make the ordinance effective on the same day as it is passed via a supermajority vote.

The City Attorney recommends that this Ordinance be temporary since it is a moratorium and passed on an emergency basis, it is recommended that the ordinance will be in effect for one year only. At the end of that period, the ordinance would automatically expire and would be replaced either by: (1) the new State law SB 2272 in which the legislature has enacted a comprehensive regulatory scheme for all privately owned pain management clinics; or (2) a more permanent local regulation of pain management clinics after analysis of the need and the effectiveness of State law SB 2272. While the State law appears comprehensive in its affect on regulating pain clinics, it does not expressly preempt the City's ability to concurrently regulate pain clinics as well and does not affect land use regulation. Since the State law does not take effect until October 1, 2010, the primary purpose of the emergency ordinance is to provide a temporary moratorium until that law goes into effect with the additional protections it would afford the public and allow the City to determine whether additional restrictions are needed.

The principal sections of the proposed ordinance are as follows:

1. It provides legislative findings of fact justifying the emergency nature of the ordinance and the temporary moratorium.
2. It provides for exemptions in compliance with the ordinance.
3. It requires a temporary moratorium of no more than one (1) year in which no pain clinic could apply for a City permit or approval to operate within the City of Palmetto and the moratorium will automatically expire at the end of that term.
4. It provides for enforcement and maximum penalties of a \$500.00 fine and 60 days imprisonment if a pain clinic opens in violation of the ordinance. Each day a clinic is open is to be considered a separate incident for penalty purposes.

The ordinance specifically covers existing pain clinics but provides a number of exemptions for legitimate business enterprisers and medical offices. This ordinance would not be codified into the existing City of Palmetto Code of Laws since the ordinance is temporary in nature and will automatically expire at the end of one year.

If the Board finds that an emergency exists, the City Attorney recommends approval of the proposed Ordinance 2010-08.

Budgeted Amount: **Budget Page No(s):** **Available Amount:** **Expenditure Amount:**

Additional Budgetary Information:

Funding Source(s): **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:**

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A

Potential Motion/Direction Requested:

Staff Contact:

Attachments:

ORDINANCE NO. 2010-08

AN EMERGENCY ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY PETITION OR ANY APPLICATION FOR THE ESTABLISHMENT OF PAIN MANAGEMENT CLINICS AS DEFINED HEREIN; PROVIDING THAT SUSPENSION OF ANY SUCH ZONING, PERMITTING AND LICENSING PROVIDING THAT SAID MORATORIUM SHALL BE IN EFFECT FOR A PERIOD OF ONE (1) YEAR OR SHALL TERMINATE ON THE EFFECTIVE DATE OF THE CITY'S ADOPTION OF LAND USE AND DEVELOPMENT REGULATIONS TO REGULATE PAIN MANAGEMENT CLINICS; PROVIDING FOR LEGISLATIVE FINDINGS, INTENT AND PURPOSE; PROVIDING FOR A DEFINITION OF PAIN MANAGEMENT CLINIC; PROVIDING FOR THE BOUNDARIES SUBJECT TO THE MORATORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2009, a Broward County 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) Florida is the largest state without a Prescription Drug Monitoring Program and has become a destination for traffickers, dealers and users seeking to illegally acquire prescription drugs; (iii) it was recently reported that over 300 individuals had been arrested in Kentucky for dealing in prescription drugs obtained from South Florida; (iv) under Florida law, if the pain clinic is not physician-owned, then it is unregulated by any state agency; (v) there is no requirement that owners and employees of pain management clinics undergo a criminal background check; (vi) from August 2008 to November 2009, one new pain clinic is opened in Broward and Palm Beach counties every three days; (vii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the United States; (viii) in 2008, prescription drugs were attributed to an average of 13.5 deaths per day in Florida; and (ix) pain clinics are migrating north from Broward County major metropolitan areas; and

WHEREAS, the City Commission has recently been made aware by news reports that a pattern of illegal drug use and distribution has been associated with some pain management clinics in Florida, which dispense narcotic drugs on-site; and

WHEREAS, the various newspapers throughout the state, including the Bradenton Herald, the Sarasota Herald Tribune, the Miami Herald, the Sun Sentinel, the Palm Beach Post, have published numerous articles in recent months describing the

“pipeline” trafficking drugs from Florida pain management clinics to users from other states such as Kentucky, Tennessee, West Virginia 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 the City’s development and redevelopment efforts; and

WHEREAS, many other cities and counties, including those on Florida’s west coast have enacted or are enacting a moratorium pertaining to pain management clinics and as a result, the City could become a target for the location of pain management clinics if these other jurisdictions are not available for these uses during the moratorium period; 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 City Commission finds and declares a need to temporarily suspend the further issuance of development permits, business licenses, tax certificates, or other approvals for pain management clinics seeking to develop or open for business within the City until such time as the City can review its land development regulations to specifically address the proliferation of pain management clinics; and

WHEREAS, the Florida Legislature in 2010 has passed Senate Bill 2272 to provide more regulatory control over pain management clinics around the state; and

WHEREAS, such regulations as contained in said Bill regulating pain clinics will not take full effect for many months; and

WHEREAS, in Chapter 2009-198, Laws of Florida, the Florida Legislature recognized such pill mills hurts the state of Florida in terms of lost lives, increased crime, human misery from addiction, ballooning health care costs and Medicare fraud; and

WHEREAS, the City Commission desires the opportunity to review its codes and Senate Bill 2272 to determine the effectiveness of such regulations and whether amendments should be made in its codes and regulations to address public health safety and welfare concerns; and

WHEREAS, the City Commission hereby directs its staff to analyze the effects and potential effects of any pain management clinics in the City to analyze whether additional standards should be incorporated into the City’s land development regulations and to evaluate the process for the issuance of development permits, business licenses, or other approvals regulating the location of pain management clinics within the City which would further and promote the public health, safety, morals and general welfare; and

WHEREAS, to provide the City staff with sufficient time to undertake its analysis it is necessary to establish a moratorium which prohibits the granting of development permits, business licenses or other approvals; and

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

WHEREAS, the City Commission finds and declares the need to enact this Moratorium Ordinance as a temporary measure on an emergency basis until such time as State or local regulations can be adopted, become effective in connection with the regulation of pain management clinics, and the effectiveness of the new and existing regulations can be evaluated.

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

Section 1: Legislative Findings, Intent and Purpose. The Whereas clauses are incorporated herein, are true and correct, and represent the legislative findings of the City Commission. It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents and businesses of the City through the analysis of any impacts from pain management clinics and through consideration of criteria for the location and permitting of pain management clinics uses within the City.

Section 2: Definition. For purposes of this Ordinance, these terms are defined as follows:

“Pain Management Clinic” (or “*Pain Clinic*”) is defined as a privately owned pain-management clinic, facility or office, which advertises in any medium for any type of pain-management services, and the physicians, staff or employees of such clinic, facility or office, prescribe or dispense pain medication including, but not limited to, opioids, fentanyl, hydrocodone, morphine and oxycodone.

In determining whether a clinic, medical practitioner’s office or pharmacy is a pain clinic or pain management clinic, the Mayor may also consider the following: whether major medical insurance accepted; whether the owner is a physician; whether the medical director is board certified in pain medicine; whether the owner is convicted of or has plead guilty or nolo contendere to an offense that constitutes a felony, or a misdemeanor the facts of which relate to the distribution or illegal prescription of a narcotic; and the percentage of patients residing out of state.

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.

Section 3: Boundaries. This Ordinance shall apply to all properties located within the boundaries of the City of Palmetto.

Section 4: Moratorium Declared. The City Commission hereby imposes a moratorium upon the application for a Development Order or a Development Permit, as those terms are defined in Section 163.3164, Florida Statutes, business licenses, or any other permits or approvals which might facilitate the opening or development of new pain management clinics or pain clinics, in whole or in part within the City. This ordinance applies to applications for Development Orders and Development Permits, business licenses and any other permit or approval, whether City review of the application is in progress at the time of adoption of this ordinance or the application is submitted after adoption of this ordinance. This Ordinance moratorium shall expire upon the earlier of the following: one (1) year from the date of passage of this Ordinance or upon the effective date of amendments to the City's Code or Ordinances or the City Zoning Code, or both, dealing with pain management clinics or pain clinics. This moratorium has been established for the minimum time period necessary for the City to complete an analysis of any impact from pain clinics and pain management clinics and consider criteria for the location and permitting of pain clinics and pain management clinics within the City of Palmetto.

Section 5: Exemptions. The following are exempted from this ordinance:

1. Any clinic licensed by the State Health Department as a facility pursuant to Chapter 395, Florida Statutes;
2. A clinic where the majority of the physicians who provide services primarily provide surgical services;
3. A clinic 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;
4. A clinic that is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. A clinic that does not prescribe or dispense controlled substances for the treatment of pain; or
6. A clinic that is owned by a corporate entity exempt from federal taxation under 26 U.S.C.s. 501(c)(3).

Section 6: Enforcement and Penalties. The owner or operator of a pain management clinic operating in violation of this ordinance in the City of Palmetto after the effective date of this ordinance without an exemption herefrom is in violation of this ordinance 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 management clinic operates in violation

of this ordinance shall be considered a separate incident for purposes of prescribing penalties.

Section 7: Repeal of laws in conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to extent of such conflict.

Section 8: Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 8: Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes:

First Reading: None due to Emergency
Publication: June 12, 2010
Second Reading and
Public Hearing: June 21, 2010

PASSED AND DULY ADOPTED, by the City Commission, in open session, by at least 2/3 vote of the entire Commission with a quorum present and voting, this 21st day of June, 2010.

CITY OF PALMETTO, FLORIDA,
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
SHIRLEY GROOVER BRYANT,
MAYOR

ATTEST: James R. Freeman
 City Clerk

By: _____
 City Clerk/Deputy Clerk