

TOWN OF MALABAR
PLANNING AND ZONING ADVISORY BOARD
REGULAR MEETING
WEDNESDAY JUNE 23, 2010
7:30 PM
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA

AGENDA

A. CALL TO ORDER, PRAYER AND PLEDGE

B. ROLL CALL

C. ADDITIONS/DELETIONS/CHANGES

D. CONSENT AGENDA :

1. Approval of Minutes

Planning and Zoning Meeting – 06/09/10
Exhibit: Agenda Report No. 1
Recommendation: Motion to Approve

E. PUBLIC HEARING: none

F. ACTION:

2. Final Review Amendment to Fence Ordinance, Article V

Exhibit: Agenda Reports No. 2
Recommendation: Action to Council

3. Final Review Recommendation Regarding R/LC, CL and Density in Malabar

Exhibit: Agenda Reports No. 3
Recommendation: Action to Council

4. Regulations of Location and Requirements for Operation of Pain Management Clinics

Exhibit: Agenda Reports No. 4
Recommendation: Action to Council

5. Malabar Land Inventory For Affordable Housing- (Reso 55-2010)

Exhibit: Agenda Reports No. 5
Recommendation: Action to Council

G. DISCUSSION:

H. PUBLIC:

I. OLD BUSINESS/NEW BUSINESS:

6. Stuart and Nancy Borton to Introduce a Request they will be making regarding a Small Scale Comp Plan Amendment (SSA) for a Land Use and Zoning Change for Property They Own on River

Exhibit: Agenda Report No. 6

Recommendation: Discussion only

J. ADJOURN

NOTE: THERE MAY BE ONE OR MORE MALABAR ELECTED OFFICIALS ATTENDING THIS MEETING.

If an individual decides to appeal any decision made by this board with respect to any matter considered at this meeting, a verbatim transcript may be required, and the individual may need to insure that a verbatim transcript of the proceedings is made (Florida Statute 286.0105). The Town does not provide this service in compliance with the Americans with Disabilities Act (ADA), anyone who needs a special accommodation for this meeting should contact the Town's ADA Coordinator at 321-727-7764 at least 48 hours in advance of this meeting.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: June 23, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

- Draft minutes of P&Z Board Meeting of June 9, 2010

"The following draft minutes are subject to changes and/or revisions by the Planning and Zoning Board and shall not be considered the official minutes until approved by the P&Z Board."

**MALABAR PLANNING AND ZONING BOARD REGULAR MEETING
June 9, 2010 7:30 PM**

This meeting of the Malabar Planning and Zoning was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER, PRAYER AND PLEDGE:

Meeting called to order at 7:30 P.M. Prayer and Pledge led by Chair Bob Wilbur.

B. ROLL CALL:

CHAIR:	BOB WILBUR
VICE-CHAIR:	PATRICK REILLY
BOARD MEMBERS:	DON KRIEGER
	BUD RYAN, excused
	LIZ RITTER
ALTERNATE:	CINDY ZINDEL
ALTERNATE:	BRIDGET PORTS, excused
SECRETARY:	DENINE SHEREAR
TOWN PLANNER	KEITH MILLS, excused
TOWN ENGINEER	MORRIS SMITH, P.E., excused

Also present: Mayor Eschenberg

C. ADDITIONS/DELETIONS/CHANGES:

D. CONSENT AGENDA :

E. PUBLIC HEARING: none

F. ACTION:

1. Request for Fence higher than 54" in RR-65 Zoning, 2225 Linrose Lane, applicant, Marcello Maggio

Exhibit: Agenda Reports No. 1

Recommendation: Discussion/ Action

Marcello Maggio 2225 Linrose Lane, I am a local firefighter for Brevard County. We have a 6 (six) foot fence we want to put up on the front of our property, my neighbor has a Bull Mastiff (dog), we have small dogs. Over the past two years accidents have happened and they get out, it has steadily gotten worse to where a couple of weeks ago his Bull Mastiff got out and attacked my dog. My dog was on his little runner, but me being a firefighter, I am gone 24 hours at a time and every time it has happened my wife has been home alone with the kids. I am just worried that my 2 and 4 year old, I do not want to say "what if ". A 4 (four) foot fence would still provide protection, but that Bull Mastiff is huge I don't want him even getting his head over, a 6 (six) foot fence would give us nice privacy and protection.

Wilbur asks Mr. Maggio about placement of fence and if it is going adjacent to where the Bull Mastiff resides. Mr. Maggio is explaining where the fence is located, he explained that the neighbor has done a good job, he has two separate fenced off properties the dog is kept on the far side of the property, south end (Mr. Maggio shows the area on the overhead), but when the dogs get out of that fenced area they come around front side of the property. Our front area has heavy brush through most of the area , but south west corner we are going to place the 6(six) foot fence and the other corner to the south east we will place the 6 (six) foot fence and put hog wire in the heavy brush as a deterrent between the two fence sections.

Mr. Maggio explains when the dog came up and attacked his dog he did not bark or anything he just attacked his little dog. If he tried to get through the thick brush we could hear it and get kids in the house.

Ritter asks how the dogs keep getting loose and Mr. Maggio explains, he has people coming in and out and every once in a while his gate gets left open. It has happened about 4 times in two years. We called and this incident was reported and everything was done responsibly, it was an accident and accidents happen.

Wilbur asks about north side of property and Mr. Maggio is not concerned with the north side right now. I just don't want my children injured.

Motion: Reilly/Krieger To Recommend to Council to Approve this Fence Height greater than 54" at 2225 Linrose Lane; VOTE: All Ayes.

2. Finalize Recommendation Regarding R/LC, CL and Density in Malabar

Exhibit: Agenda Reports No. 2

Recommendation: Discussion/ Action

Wilbur explaining in packet there is the corrected Table (1-3.3 (A)). Reilly could not tell from pdf files what got changed.

The discussion is amongst the Board about the District Provision Table 1.3.3 (A) Size and Dimension Regulation. Ritter explains that last two columns on the Table have to do with the correction. Ritter did not understand the on the corrected Table that it went from "floor area ratio" instead of "maximum building coverage", then it went from "minimum open spaces" instead of "maximum density".

Reilly is explaining that "floor ratio" is correct, that is how builders do it.

Ritter is discussing about the last Column on page 123 of Table 1-3.3(A) "Maximum Density (units per acre) with Central Water and Wastewater" is that community service because all these in Malabar are well and septic.

Zindel states it is public water and sewer, Reilly explains if it exists if not then that column is not applicable, at this time.

Ritter wants to know where is the column that states what you can do with your own well and septic, I don't want to have to deal in maybes. Reilly explains if you own property in RR-65 zoning without central water and wastewater all columns apply except the last column, all apply in present condition, if you get water and sewer than the last column applies.

Ritter is stating we have septic and wells, why is it not in the Table. I don't want assumptions.

The Board is discussing the Table 1-3.3(A) about the last Column, and where is the Columns that states if I have water well and a septic tank what I can do. Reilly is explaining it is every column except for the last column. The rules change when you have water and sewer going through your property. If you have central water and sewer which is public sewer as soon as that goes on the property you can do more with you property.

Ritter is interested only water and sewer.

Wilbur is explaining that the Table has been changed around; however it would be simple to add a column to this corrected Table, what you could do without Central Water and Sewer.

Wilbur asks Ritter for a Motion to add a last columns to the corrected Table 1-3.3 (A) so it specifically state what can be done.

Motion: Ritter/ Reilly to add the another column to the far right that states what you can do without Central Water and Waste Water (like supp. No. 9 page 123)

Ritter thinks it is best not to assume, it is best to have definite answers.

RLC & CL Density from 6 units to 4 units down size from 6 to 4 units. All ayes

Krieger, asking about why no zero's on the ends? Last column?

Ritter, is asking why N/ A is not appropriate. We need to ask Town Planner- Mills about the References if they need to match ask Mills

G. DISCUSSION:

3. Amendments to Fence Ordinance, Article V

Exhibit: Agenda Reports No. 3

Recommendation: Discussion

The Board is discussing the Fence Ordinance that was suggested and Krieger is going through each pages 1-4, making corrections as they go.

The Mayor wrote some comments

Most changes

Did not change section definitions

What was added is:

Things that were added & rearranged (Noted on Hard copy of Fence Ordinance/ Changes and Corrections):

- Added Gates,
- Entrance Gates
- Page 2 correction as noted on page yellow highlighted.
- Page 3 Krieger explains that the Mayor suggesting about 8 feet ,
- Wilbur corrections: permitted wall and fence do not need 8 feet walls & fence, 6 feet is tall enough.
- Page 4 o.k.

Ritter suggestions, to do a table or possibly alphabetize definitions

Zindel has suggested to clarification perimeter fencing when you have planned unit developing so you do not assume their perimeter fence is the developer's fence.

Wilbur adds that it may or may not be in the deed restrictions, of the development. The perimeter fencing is in, if access is needed to the lots is should be done within the subdivision.

The Board is discussing the subdivision and lots that have fencing around, i.e Stillwater Preserve. Ritter adds that the houses along Corey Road do not have access from within the subdivision only off Corey Road.

H. PUBLIC:

Open to the public:

Juliana Hirsh- Malabar Road, Malabar, about the Corey Road driveways, It should not have been that way with the lots on the outside of subdivision , I agrees with Zindel about clarifying perimeter fencing.

All the driveways are coming out to Corey Rd; in the outside lots of Stillwater Preserve we cannot expect Board Members to be Engineers to foresee this situation
For example Weber Woods, I had to fight to put Town responsible if I got Flooded out, I am already in a wetland area, these things are important. It is not always going to be a no building subdivision; plans should be checked out more.

I. OLD BUSINESS/NEW BUSINESS:

J. ADJOURN:

There being no further business to discuss, **MOTION:** Ryan / Krieger to adjourn this meeting.
Vote: All Ayes. The meeting adjourned at 9:30 P.M.

BY:

Bob Wilbur, Chair

Denine M. Sherear, Secretary

Date Approved

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: June 23, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Amendments to Fence Ordinance, Article V

BACKGROUND/HISTORY:

This item was on last meeting of 06/09/2010, it was reviewed and corrections were made by this Board. Please review all corrections for action to be presented to Council.

ATTACHMENTS:

- Corrected Fence Ordinance , Article V (from Meeting of 06/09/2010)

ACTION REQUESTED:

Formulation of recommendations to bring to Council to bring this subject to final disposition.



Section 1-5.8. Fences and walls.

(a) Definitions.

For purposes of this section, the following terms shall have the following definitions:

Abut or abutting property means a lot or parcel sharing a common boundary with the lot or parcel in question, or a lot or parcel immediately across a public or private right-of-way or street from the lot or parcel in question.

Building line means a line within a lot or parcel established by yard or setback requirements in the land development regulations of the Town, outside of which no principal building or structure may be erected.

Commercial district means any area of the Town having the zoning classification CL or CG in accordance with the land development regulations of the Town.

Entrance Gate means a gate designed for ingress and egress for vehicular traffic to and from a lot or parcel that directly connects to the public roadway. Entrance Gates may be constructed of approved materials and may be opened manually or by automated means and may be guided by hinges, tracks, or other approved means.

Fence means a vertical row of nonliving material, placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) adjacent parcels of land. Such amenities as kennels, cages, corals, trellises and related conveniences are not fences for the purposes of this subsection.

Gate means a rigid structure to open and close in order to allow ingress and egress through a fence or wall. Gates may be constructed of approved materials and may be opened manually or by automated means and may be guided by hinges, tracks, or other approved means.

Height means the distance from existing grade to the top of such fence or wall including post and/or uprights measured on the side facing abutting property.

Industrial district means any area of the Town having the zoning classification IND in accordance with the land development regulations of the Town.

Institutional district means any area of the town having the zoning classification INS in accordance with the land development regulations of the town.

Opaque shall mean that objects located on one side of a fence or wall are not visible from the opposite side when the viewer's line of sight to such object is through such fence or wall.

Residential district means any area of the Town having the zoning classification RR-65, RS-21, RS-15, RS-10, RM-4, RM-6, R-L/C or R-MH, in accordance with the land development regulations of the town.

Wall means a vertical row of primarily composed of masonry materials placed close together or abutting each other in such a manner as to form a boundary or barrier between two (2) parcels of land.

Yard means an open, unoccupied space on the same lot or parcel with a building or buildings, other than a court, which is unobstructed from the ground upwards by buildings or structures.

1. Required front yard means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance established by the Land Development Code beyond which no building may be erected. Is determined by the frontage to which the address is assigned to such lot or parcel.
2. Required rear yard means an open, unoccupied space extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and the building line.
3. Required side yard means an open, unoccupied space between the front and rear building lines and the side lot line and the side building line.

(b) Height restrictions for fences or walls in commercial, industrial and institutional districts. Fences or walls located, erected, constructed, or altered on any property located in a commercial, industrial and institutional district shall comply with the following height requirements: Commercial, Industrial and Institutional districts shall be no more than eight (8) feet in height including barbed wire for security.

(c) Height restrictions for fences and walls in residential districts. Fences or walls located, in a residential district shall comply with the following height requirements:

1. Except as provided in this section, no portion of any fence or wall shall be more than five (5) feet in height. Such permitted fences or walls shall be constructed in a manner that provides adequate visibility at any public or private right-of-way, driveway or street providing access to such lot or parcel, and at any abutting intersection.
2. For any lot or parcel not containing a structure, the requirements of subsection (e) 1, shall be applied in the same manner as if a structure had been constructed in accordance with such required yard area or setback as specified within the zoning district requirements.
3. Any lot or parcel located within a RR-65 District shall be permitted a fence or wall six (6) feet or less in height.
4. Subject to the requirements in this subsection the owner of any lot or parcel located in RR-65 District may install gates and/or entrance gates and supporting structures that do not exceed two (2) feet above the maximum height restriction to which such gate and support structures is attached. Arches or other decorative features may supplement gates.
 - a. Arches or other decorative features associated with an entrance gate serving as the primary vehicular ingress and egress to the public roadway must meet FDOT minimum height requirements of 13.6 feet and a maximum of 18 feet in height for safe passage of emergency vehicles.

- b. The entrance gate and support structures must be set back at least 15 feet from the front property line and a minimum of 20 feet in width.

(d) Height restrictions for Perimeter Fencing for Certain Residential Subdivisions/Developments. Any perimeter fencing and/or wall which is placed or located on any portion of the perimeter boundaries of a residential subdivision or development shall comply with the following:

1. In RS Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall exceed six (6) feet in height.
2. In the RR Zoning District, no portion of a fence or wall, including gates, support posts, members, or decorative features, located on any perimeter property of a residential subdivision or development that is not part of a platted residential lot shall not exceed six (6) feet.
3. In the R-MH Zoning District no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a mobile home residential subdivision or development that is not part of a mobile home site shall exceed six (6) feet in height.
4. In RM Zoning Districts, no portion of a fence or wall, including gates, support posts, members or decorative features, located on any perimeter property of a multi family residential subdivision or development that is not part of a residential site shall exceed six (6) feet in height

(e) Maintenance of fences, walls and associated structures. All fences, walls and associated structures in the Town shall be maintained in good repair and in a structurally sound condition. All such structures shall be maintained to their original specifications.

(f) Materials and design requirements.

1. All fences or walls constructed pursuant to the permit issued in accordance with this article shall comply with all applicable provisions relating to the type of construction, required materials, height and location.

2. Posts and stringers required for the support of opaque fences shall not be visible from the side facing any abutting property, for which such fence permit was issued. Posts shall be a treated wood type or wood or material type with a resistance to decay as adopted by code.

3. All walls shall have a painted surface with struck mortar joints or, stucco or other finished surface on the side facing any abutting property for which the permit for such wall was issued.

4. The following provisions shall be prohibited in any fence or wall:

- a. Electrified wire strands. Except in the RR-65 districts when used for the control of animals and only around the control area.

b. Barbed wire. Except in the RR-65 districts when used for the control of animals and only around the control area, and for the top of fences in the commercial, industrial and institutional districts.

(g) Permit required for fence or wall. No fence or wall shall be constructed, erected, replaced or altered between abutting parcels unless a permit therefor has been obtained from the Town by the owner of the property on which such fence or wall is to be located, or by some other person duly authorized by such owner. The application for such permit shall be on a form provided by the building official and shall be accompanied by drawings showing the proposed location of and the specifications for the type of construction of such fence or wall. Permits are not required for periodic repair and maintenance of an existing fence or wall.

(h) Permit fee. Permit fees shall be calculated in accordance adopted resolutions. No permit shall be issued unless and until all fees associated with said permit are paid.

(i) Restriction of fences or walls on public easements, utility easements and public rights-of-way.

1. No wall, fence, gate or related structure shall be constructed on any public right-of-way and except as provided in subsection (2) hereof, no fence shall be constructed on any easement.

2. A non permanent fence or gate may be constructed on an easement providing the property owner making application for such fence has submitted written permission from any affected property owners and agrees in writing, at the time of application for permit, that the property owner and/or any successors in interest will bear the expense of removal of such fence if access to said easement is required.

(j) Town Council may authorize non-compliant design specifications only after considering the recommendation of the Planning and Zoning Board. Prior to approving subject structure the Town Council shall render a finding that the structure is safe and visually compatible in the area.

(Ord. No. 99-1, § 1, 4-19-00; Ord. No. 08-05, § 1, 5-5-08)

Cross references: Buildings and building regulations, ch. 6.

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: June 23, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Permitted Land Uses Within R/LC and CL Zoning

BACKGROUND/HISTORY:

Review changes and density issues, then make finalized recommendations regarding R/LC, CL and Density in Malabar, so we can work towards a Public Workshop for input and receive recommendations from the public.

The Town Clerk- Debby Franklin at the next Town Council Meeting will ask for available dates for a Public Workshop to get public input on these recommendations as well.

ATTACHMENTS: none

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: June 23, 2010

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Regulation of Pain Management Clinic – Ordinance to be Drafted

BACKGROUND/HISTORY:

The City of Satellite Beach along with Mayor Ferrante is attempting to lead the way in Brevard County to regulate pain management clinics and to stop proliferation of “pill mills.” Mayor Ferrante has offered to prepare a package of materials for each municipality in Brevard County this is to include a proposed Satellite Beach regulatory ordinance and a new Florida law which regulates pill mills

Staff is asking that this P & Z Board review attached information concerning these pain management clinics, commonly known as “pill mills” that would soon be attempting to open for business in Brevard County. It would be under recommendation from this P & Z Board to recommend to Council and the advice of the Town Attorney -Karl Bohne, to draft an Ordinance to regulate these types of business in our Town.

ATTACHMENTS:

- Article 1- Memorandum dated June 10, 2010 (1 Page)
- Article 2- Portion of Satellite Beach Minutes (1 Page)
- Article 3- Florida Today Article dated June 17, 2010 (2 Pages)
- Article 4- Florida Senate- Bill Analysis & Fiscal Impact Statement (16 Pages)
- Article 5- Ordinance No 1033- Satellite Beach (6 Pages)
- Article 6-Satellite Beach Police overview of Pain Management Clinics dated 04/08/2010 (21 Pages)
- Article 7- Chapter 2010-211 Committee Substitute for Senate Bill No. 2272 and 2722 (21 Page)

ACTION OPTIONS:

Recommend to Council to Adopt an Ordinance

"ARTICLE 1"

MEMORANDUM

TO: Board of Directors, Space
Coast League of Cities

FROM: Paul Gougelman, General Counsel 

SUBJECT: Pain Management Clinics

DATE: June 10, 2010

At the last meeting of the League, Satellite Beach Mayor Joe Ferrante made a presentation to the Board regarding pain management clinics, commonly known as "pill mills." Mayor Ferrante advised the Board of the danger to the community posed by these facilities, and that these facilities would soon be attempting to open for business in Brevard County.

Mayor Ferrante informed the Board that the City of Satellite Beach was leading the way in Brevard County to regulate pain management clinics and to stop the proliferation of pills mills. I offered to prepare a package of materials for each municipality in Brevard County, including the proposed Satellite Beach regulatory ordinance and a new Florida law which regulates pill mills.

I suggest that you discuss these materials with appropriate individuals in your municipality. Attached to this memo, please find:

- 1) Satellite Beach Ordinance No. 1033. This Ordinance has already been presented on first reading;
- 2) Memo from Commander Brad Hodge to Satellite Beach City Manager Mike Crotty dated April 8, 2010 relating to Pain Management Clinics with numerous attachments;
- 3) Chapter No. 2010-211, Laws of Florida, (CS/CS/Senate Bill 2272) a new state law regulating pill mills; and
- 4) Bill Analysis and Fiscal Impact Statement for CS/CS/Senate Bill 2272 (Chapter No. 2010-211, Laws of Florida).

PRG/-

"Article 2"

Portion of Satellite Beach Council Meeting Minutes 05/19/2010

CITY MANAGER REPORT

City Manager Crotty reported on the following issues:

Review of the Pain Management Clinic Ordinance

At the May 17, 2010, meeting, the Planning and Zoning Advisory Board held a public hearing and

made recommendations regarding an ordinance to include pain management clinics as a conditional use in the Commercial District and provide a new section to the Land Development Regulations which provides specific standards and guidelines for operating a pain management clinic. The draft ordinance as recommended by PZAB has been forwarded to Paul Gougelman, Attorney for the Space Coast League of Cities.

Portion of Satellite Beach Council Meeting Minutes 06/02/2010

City Attorney Beadle read Ordinance No. 1033 by title on first reading.

Ordinance No. 1033 adds definitions for drug store, medical office, pain management clinic, and retail pharmacy to Section 30-107 of the Land Development Regulations. It also creates a new subsection (16) to Section 30-416 (c), which allows pain management clinics as a conditional use in the Commercial Zoning District so long as they comply with provisions in the newly created section 30-621.

Police Commander Brad Hodge presented an overview of the information in the Agenda packet regarding the background and local impact of prescription drug abuse. In 2008, 27% of total drug arrests in Satellite Beach were for illegal prescription pills; in 2009, 34%; and thus far in 2010, 42%.

The Planning and Zoning Advisory Board held a public hearing on May 24, 2010, recommended approval of Ordinance No. 1033. Commander Hodge recognized the extensive work that the City Attorney and Lorraine Gott had put into drafting this ordinance.

The Prescription Drug Monitory Program (currently in effect in 32 states) was passed in Florida in July 2009, and will become effective December 1, 2010. There is some question whether the law will deter such clinics after they have been established. Brevard County Sheriff's Office is working with the County Attorney to develop a county ordinance.

Staff recommended approval of this ordinance to provide immediate regulation of pain management clinics. This ordinance will work well in conjunction with the State regulations and will provide protection for the City immediately, instead of waiting until December 31 when the State regulations take effect.

Mayor Ferrante asked for public comments; there were no comments.

ACTION: Councilman Higginson MOVED, SECOND Councilman Chase, to approve Ordinance No. 1033 on first reading. VOTE: ALL AYES. MOTION CARRIED.

Mayor Ferrante expressed appreciation to City Attorney Beadle for his work in drafting Ordinance No. 1033. He also requested staff to get some information into the newspaper about this Ordinance. City Manager Crotty will schedule a conference call with Norman Moody from Florida Today, the Mayor, and Commander Hodge.

"Article 3"

FLORIDATODAY.com

Satellite Beach restricts cash 'pill mills'

BY R. NORMAN MOODY • FLORIDA TODAY • June 17, 2010

SATELLITE BEACH — The city council took the final step in its effort to keep out "cash-only" pain management clinics that police said have proliferated in South Florida.

The council voted unanimously Wednesday night to restrict the kind of pain management clinics that operate as "pill mills," where people sometimes seek to obtain narcotic pills illegally.

"I'm in complete agreement with this," said Dr. Arthur Horn of Satellite Beach. Horn said that his practice includes pain management.

Horn said patients of legitimate clinics are in dire need of the medication they are prescribed, but said the ordinance could help to keep out the "cash-only" clinics.

"They are dangerous and totally irresponsible," he said. "The appropriate pain management does not tolerate diversion, misuse and abuse."

Councilman Michael Chase said he knew of people that have needed the services of a pain management clinic. He said a legitimate clinic questions patients and has them fill out paperwork.

"There are legitimate and great services out there," Chase said.

City officials said the "cash-only" pain management clinics are moving north from South Florida after authorities there clamped down on the facilities, where they said people can go "doctor shopping" because there is little monitoring.

Police in Brevard County said there has been a steady increase in the use of illegally obtained prescription drugs such as Vicodin, hydrocodone and oxycodone. Law enforcement said they are not aware of any "cash only" pain management clinics operating anywhere in the county at the moment; Satellite Beach's measure is a pre-emptive one.

Mayor Joseph Ferrante brought the issue to the

forefront after learning of the problem in South Florida.

The council gave tentative approval June 2 and Wednesday night gave the measure its final approval.

The measure goes into effect immediately and prohibits pain management clinics from operating on a cash-only basis. The clinics must provide a daily summary of the number of prescriptions, doses and other tracking information.

A Broward County grand jury found that in less than two years the number of pain clinics in South Florida went from four to 176, dispensing 9 million doses of oxycodone every six months.

A new Florida law makes the Department of Health responsible for establishing an electronic database of controlled substance prescriptions by Dec. 1. The law requires the department to adopt rules concerning the reporting, access and evaluation of information in the database. Clinics dispensing controlled substances would be required to give detailed information for inclusion in the database. A pharmacy, prescriber or dispenser would have access to the database.

Satellite Beach officials, however, did not want to wait. The ordinance goes further in restricting the cash-only businesses. Officials said other Brevard County communities are likely to consider similar ordinances.

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"I think it's going to be a good thing for Satellite Beach," police Cmdr. Brad Hodge said. "It's going to be good for Brevard County."

Contact Moody at 242-3651 or nmoody@floridatoday.com.

Advertisement



USA TODAY
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The advertisement features a smartphone displaying the USA TODAY AutoPilot app interface. The app shows a list of travel-related items, including a flight from BNA to MCO, a Washington hotel, and a gallery of photos. The phone's status bar at the top shows 'AT&T 3G', '9:42 AM', and a battery icon.

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"Article 4"

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/CS/SB 2272 & CS/SB 2722

INTRODUCER: Criminal Justice Committee; Health Regulation Committee, and Senators Fasano, Gardiner and others

SUBJECT: Pain Management

DATE: April 13, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	Fav/CS (SB 2272)
2.	Stovall	Wilson	HR	Fav/CS (SB 2722)
3.	Erickson	Cannon	CJ	Fav/CS
4.			IIA	
5.			WPSC	
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill modifies and enhances the regulation of pain management and pain-management clinics in Florida. It also requires the prescription drug monitoring program's database to provide information to law enforcement agencies that might be indicative of violations of the Florida Drug Abuse Prevention and Control Act.

The bill provides for exceptions concerning the Department of Health (Department) obtaining patient consent for release of patient records and authorizes the Department to obtain patient records without a subpoena from a pain-management clinic under certain conditions.

The bill provides for additional exemptions to the registration requirements for a pain-management clinic including, but not limited to, a clinic that is owned by a publicly held corporation, is affiliated with an accredited medical school, does not prescribe or dispense controlled substances for the treatment of pain, or is owned by a corporate entity which is exempt from federal taxation as a charitable organization.

As a part of registering and maintaining the registration of a pain-management clinic, a designated physician must be identified. Certain responsibilities are assigned to the designated physician. The bill provides additional grounds for disciplinary action against a licensee who serves as the designated physician of a pain-management clinic.

The bill also authorizes the Department to deny an application to register a pain-management clinic, revoke or suspend a registration, or impose an administrative fine for various offenses or conditions. Additional requirements for operating a pain-management clinic are enumerated in the bill.

Only a medical physician or osteopathic physician may dispense any medication, including a controlled substance, on the premises of a pain-management clinic. A practitioner who practices at a pain-management clinic must take certain action. A physician may not practice medicine or osteopathic medicine if the clinic is not registered or, effective July 1, 2012, the physician has not successfully completed a pain medicine fellowship or a pain medicine residency or does not comply with rules adopted by the applicable medical boards.

The bill establishes additional criminal violations:

- It is a third degree felony to knowingly operate, own, or manage a non-registered pain-management clinic that is required to be registered.
- It is a first degree misdemeanor to knowingly prescribe or dispense, or cause to be prescribed or dispensed, controlled substances in an unregistered pain-management clinic that is required to be registered.

The Department must adopt rules addressing, but not limited to, what constitutes practice by a designated physician at the pain-management clinic for which the physician has assumed responsibility and factors that might be indicative of certain violations of the state's laws relating to controlled substances. The Boards of Medicine and Osteopathic Medicine must adopt a rule establishing the maximum number of prescriptions for certain controlled substances that may be written at a pain-management clinic daily.

The bill substantially amends the following sections of the Florida Statutes: 456.037; 456.057; 458.327; 458.331; 459.013; 459.015; 893.055; and 893.0551.

This bill creates the following sections of the Florida Statutes: 458.3265 and 459.0137.

This bill repeals the following sections of the Florida Statutes: 458.309(4), (5), and (6), and 459.005(3), (4), and (5).

II. Present Situation:

Pain-Management Clinics

In 2009,¹ the Legislature required all privately owned pain-management clinics, which includes clinics, facilities, or offices, that advertise for any type of pain-management services or employ a physician or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications to register with the Department by January 4, 2010.² Facilities licensed under ch. 395, F.S., i.e., hospitals, ambulatory surgical centers, or mobile surgical facilities, or clinics in which a majority of the physicians provide surgical services in the clinic are exempt from this registration requirement.

Approximately 940 pain-management clinics have registered with the Department since the law went into effect.³

The current law does not limit who may own a pain-management clinic, but during the 2009 Session the Legislature enacted s. 456.0635, F.S.,⁴ which, among other things, requires the Department to refuse to register a pain-management clinic if any principal, officer, agent, managing employee, or affiliated person of the applicant has been:

- Convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under ch. 409, F.S., relating to social and economic assistance, ch. 817, F.S., relating to fraudulent practices, ch. 893, F.S., relating to controlled substances, 21 U.S.C. §§ 801-970, relating to the federal controlled substances act, or 42 U.S.C. §§ 1395-1396, relating to Medicare and Medicaid, unless the sentence and any subsequent period of probation for such conviction or pleas ended more than 15 years prior to the date of the application;
- Terminated for cause from the Florida Medicaid program pursuant to s. 409.913, F.S., unless the applicant has been in good standing with the Florida Medicaid Program for the most recent 5 years; or
- Terminated for cause, pursuant to the appeals procedures established by the state or Federal Government, from any other state Medicaid program or the federal Medicare program, unless the applicant has been in good standing with a state Medicaid program or the federal Medicare program for the most recent 5 years and the termination occurred at least 20 years prior to the date of the application.

An allopathic physician or osteopathic physician may not practice in a pain-management clinic that is required to be registered but is not registered.⁵ Each clinic location must be registered separately. The medical director is responsible for registering the clinic if that clinic is licensed as a health care clinic under ch. 400, F.S. Otherwise, a pain-management clinic must designate a physician who is licensed as a medical physician or osteopathic physician upon registration to be responsible for complying with all requirements relating to registering the clinic.

¹ See sections 3 and 4 of ch. 2009-198, L.O.F. (Laws of Florida).

² ss. 458.309(4) and 459.005(3), F.S.

³ See the Department of Health Committee Substitute Analysis, Economic Statement and Fiscal Note for SB 2722, dated March 10, 2010 (on file with the Senate Health Regulation Committee).

⁴ s. 24, ch. 2009-223, L.O.F.

⁵ Ibid 2.

The Boards of Medicine and Osteopathic Medicine must adopt rules relating to the standards of practice for physicians practicing in privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications. The rules must address, minimally, the following subjects: facility operations; physical operations; infection control; health and safety requirements; quality assurance; patient records; training requirements for health care practitioners who are not regulated by another board; inspections; and data collection and reporting. Both boards are actively engaged in the rulemaking process.⁶ Currently, Rules 64B8-9.013 and 64B15-14.005, F.A.C., both relating to Standards for the Use of Controlled Substances for the Treatment of Pain, apply to all physicians subject to the Board of Medicine and the Board of Osteopathic Medicine, respectively. These rules have been in place for several years.

The Department must annually inspect each pain-management clinic to ensure that it complies with the rules adopted by the applicable boards relating to the standards of practice for physicians practicing in privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications, unless the office is accredited by a nationally recognized accrediting agency approved by the respective board.

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Described are the differences between controlled substance schedules:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. Examples: heroin and methaqualone.
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples: cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples: lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples: alprazolam; diazepam; and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples: low dosage levels of codeine; certain stimulants; and certain narcotic compounds.

⁶ See, for example, the notices published on January 15, 2010 in the Florida Administrative Weekly for meetings/workshops in February 2010, for each board.

A prescription for a controlled substance listed in Schedule II may be dispensed only upon a written prescription of a practitioner, except that in an emergency situation, as defined by Department rule, it may be dispensed upon oral prescription but is limited to a 72-hour supply. A prescription for a controlled substance listed in Schedule II may not be refilled.⁷ A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state.⁸ Currently federal law does not authorize electronic prescribing (e-prescribing) for controlled substances.⁹

Dispensing, Prescribing, and Administering

“Dispense” means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.¹⁰

Prescribing is issuing a prescription. For purposes of the bill, a “prescription” includes an order for drugs that is written, signed, or transmitted by word of mouth, telephone, telegram, or other means of communication by a practitioner licensed by the laws of the state to prescribe such drugs, issued in good faith and in the course of professional practice, intended to be filled or dispensed by another person licensed to do so.¹¹

“Administer,” for purposes of the bill, means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person.¹²

Dispensing Practitioner

Chapter 465, F.S., relating to the practice of pharmacy, contains the provisions for a dispensing practitioner.¹³ Under this chapter, a practitioner authorized by law to prescribe drugs may dispense those drugs to his or her patients in the regular course of his or her practice. If a practitioner intends to dispense drugs for human consumption for a fee or remuneration of any kind, the practitioner must register with his or her professional licensing board as a dispensing practitioner, comply with and be subject to all laws and rules applicable to pharmacists and pharmacies, and give the patient a written prescription and advise the patient that the prescription may be filled in the practitioner’s office or at any pharmacy.

Practitioners in Florida who are authorized to prescribe include medical physicians, physician assistants, osteopathic physicians, advanced registered nurse practitioners, podiatrists, naturopathic physicians, dentists, and veterinarians. However, s. 893.02, F.S., of the Florida controlled substances act defines which practitioners may prescribe a controlled substance under

⁷ s. 893.04(1)(f), F.S.

⁸ s. 893.04(2)(e), F.S.

⁹ The federal DEA published proposed rules that would allow practitioners to issue e-Prescriptions for controlled substances; however, these rules have not become final. See Electronic Prescriptions for Controlled Substances, 73 FR at p. 36722, dated June 27, 2008, available at: <<http://edocket.access.gpo.gov/2008/pdf/E8-14405.pdf>> (Last visited on March 29, 2010).

¹⁰ s. 893.02(7), F.S.

¹¹ s. 893.02(20), F.S.

¹² s. 893.02(1), F.S.

¹³ s. 465.0276, F.S.

Florida law. A “practitioner” is defined to mean a licensed medical physician, dentist, veterinarian, osteopathic physician, naturopathic physician, or podiatrist, if such practitioner holds a valid federal controlled substance registry number. Accordingly, the prescribing of controlled substances is a privilege that is separate from the regulation of the practice of the prescribing practitioner.

Access to Records without Subpoena or Consent

In Florida, patients have a constitutional right to privacy under Article I, Section 23 of the State Constitution and judicial decisions. Although Florida courts have recognized patients’ right to secure the confidentiality of their health information (medical records) as a right to privacy, that right must be balanced with and yields to any compelling state interest. Several statutes authorize the release of patient records without consent of the person to whom they pertain.¹⁴

Section 893.07, F.S., requires any person who dispenses controlled substances to make and maintain records, including prescription records, relating to the receipt and disposition of the controlled substances. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the following:

- Date of selling, administering, or dispensing;
- Correct name and address of the person to whom or for whose use, or the owner and species of animal for which, sold, administered, or dispensed; and
- Kind and quantity of controlled substances sold, administered, or dispensed.

This statute further provides that the records are to be kept and made available for a period of at least 2 years for inspection and copying by law enforcement officers whose duty it is to enforce the laws of this state relating to controlled substances.

As recently as November 30, 2009, the First District Court of Appeal held¹⁵ that this statute does not require a subpoena, warrant, or prior notice to the patient. The court also held that providing of records to law enforcement in compliance with state law did not violate the federal Health Insurance Portability and Accountability Act and did not violate the defendant’s state constitutional right to privacy.

Health Care Clinic License

Certain health care clinics are licensed and regulated by the Agency for Health Care Administration (Agency) under part X of ch. 400, F.S., the Health Care Clinic Act (Act). A clinic is defined as an entity at which health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.¹⁶ However, the Act provides for numerous exceptions to the requirement for licensure and compliance with regulation under the Act.

¹⁴ See, for example, s. 395.3025(4), F.S., relating to patient records in hospitals and s. 456.057, F.S., relating to patient records held by health care practitioners.

¹⁵ See *State v. Carter*, 23 So.3d 798 (Fla. 1st DCA 2009).

¹⁶ s. 400.9905(4), F.S.

Every entity that meets the definition of a "clinic" must maintain a valid license with the Agency at all times, and each clinic location must be licensed separately. Licenses are issued for a 2-year period at a fee of \$2,000. The application for licensure must include: information regarding the identity of the owners, the financial officer or similarly situated person; licensed health care practitioners at the clinic and the medical director or clinic director; proof of financial ability to operate a clinic; any exclusions, permanent suspensions, or terminations from the Medicare or Medicaid programs; and proof that the clinic is in compliance with applicable rules. A level 2 background screening pursuant to ch. 435, F.S., is required of each of the persons identified in the application for clinic licensure and a license may not be granted to the clinic if any of these persons has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

Prescription Drug Monitoring Program

Chapter 2009-197, L.O.F, established the prescription drug monitoring program in s. 893.005, F.S. This law requires the Department, by December 1, 2010, to design and establish a comprehensive electronic system to monitor the prescribing and dispensing of certain controlled substances. Prescribers and dispensers of certain controlled substances must report specified information to the Department for inclusion in the system.

Data regarding the dispensing of each controlled substance must be submitted to the Department no more than 15 days after the date the drug was dispensed, by a procedure and in a format established by the Department, and must include minimum information specified in the Act. Any person who knowingly fails to report the dispensing of a controlled substance commits a first-degree misdemeanor. The act provides exemptions from the data reporting requirements for controlled substances when specified acts of dispensing or administering occur.

Section 893.0551, F.S., enacted at the same time, provides for a public records exemption for certain personal information of a patient and certain information concerning health care professionals. This section sets forth enumerated exceptions for disclosure of this information after the Department ensures the legitimacy of the person's request for the information.

III. Effect of Proposed Changes:

Section 1 amends s. 456.037, F.S., to provide that a pain-management clinic that is required to be registered is a business entity for purposes of regulation by the Division of Medical Quality Assurance in the Department.

Section 2 amends s. 456.057, F.S., to provide an exception to the requirement concerning a patient's release for his or her patient records. The Department is not required to attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic.

In addition, the bill authorizes the Department to obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed, if the Department has probable cause to believe that a violation of the provisions in s. 458.3265, F.S.,

or s. 459.0137, F.S., governing pain-management clinics, is occurring or has occurred, and reasonably believes that obtaining authorization is not feasible due to the volume of the dispensing and prescribing activity and that obtaining patient authorization or a subpoena would jeopardize the investigation.

Section 3 repeals s. 458.309(4), (5), and (6), F.S., relating to provisions affecting pain management clinics under the practice of allopathic medicine, to move these provisions into s. 458.3265, F.S., which is created in Section 4 of the bill.

Sections 4 and 8 create s. 458.3265, F.S., relating to pain-management clinics under the practice of medicine, and s. 459.0137, F.S., relating to pain-management clinics under the practice of osteopathic medicine. These sections combine the provisions governing the regulation of pain-management clinics in Florida into one section of law for the practice of medicine and another for the practice of osteopathic medicine. Existing provisions in current law under s. 458.309(4), (5), and (6), F.S., are moved into s. 458.3265, F.S. Similarly, existing provisions in current law under s. 459.005(3), (4), and (5), F.S., are moved into s. 459.0137, F.S.

Registration

Sections 458.3265(1) and 459.0137(1), F.S., provide that all privately owned pain-management clinics which advertise for pain-management services, or employ an allopathic or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the Department unless:

- The clinic is a hospital, ambulatory surgical center, or mobile surgical center licensed under ch. 395, F.S., (in current law);
- The majority of the physicians who provide services in the clinic primarily provide surgical services (in current law);
- The clinic is owned by a publicly held corporation whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;
- The physicians who provide services in the clinic primarily provide chiropractic services and do not dispense controlled substances;
- The clinic is affiliated with an accredited medical school;
- The clinic does not prescribe or dispense controlled substances for the treatment of pain; or
- The clinic is owned by a corporate entity that is exempt from federal taxation as a charitable organization.

Each clinic location must be registered separately and identify a designated physician who has a full, active, and unencumbered license to practice allopathic medicine or osteopathic medicine to be responsible for complying with all requirements relating to registration and operation of the clinic. If the designated physician terminates that relationship with the clinic, the identity of another designated physician must be communicated to the Department within 10 days of termination. This physician must practice at the clinic location for which he or she has assumed responsibility as the designated physician. The registration of a pain-management clinic that does not have a designated physician practicing at the clinic is subject to a summary suspension.

The Department must deny registration to any pain-management clinic that is not fully owned by a physician or group of physicians, each of whom is licensed under ch. 458, F.S., or ch. 459, F.S., or that is not licensed as a health care clinic under part X of ch. 400, F.S. In addition, the Department must deny registration, or revoke a registration previously issued, to any pain-management clinic owned by or with any contractual or employment relationship with a physician:

- Whose DEA license has ever been revoked,
- Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction, or
- Who has been convicted of, or has entered a plea of 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, in this state, any other state, or the United States.

However, the Department may adopt a rule to grant an exemption to denying a registration or revoking a previously issued registration based on these criteria if more than 10 years have elapsed since adjudication.

The Department may revoke a pain-management clinic's registration and prohibit all physicians associated with that clinic from practicing at that clinic's location based upon an annual inspection and evaluation of compliance with factors described in ss. 458.3265(3) and 459.0137(31), F.S., relating to inspections. If the clinic's registration is revoked or suspended, the clinic's designated physician, the owner or lesser of the clinic's property, and the clinic's manager and proprietor must cease operations as of the effective date of the suspension or revocation. These persons must also remove all signs and symbols identifying the premises as a pain-management clinic. The designated physician must 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 an unregistered pain-management clinic may be deemed adulterated pursuant to the Florida Drug and Cosmetic Act.

If a pain-management clinic's registration is revoked, any person named in the registration documents may not, as an individual or as a part of a group, apply to operate a pain-management clinic for 5 years after the date the registration is revoked. The period of suspension for registration of a pain-management clinic must be prescribed by the Department, but may not exceed one year.

A new registration application must be submitted upon a change of ownership of a registered pain-management clinic.

Physician Responsibilities

Sections 458.3265(2) and 459.0137(2), F.S., set forth physician responsibilities applicable to any physician who provides professional services in a pain-management clinic that is required to be registered.

A physician may not practice medicine or osteopathic medicine in a pain-management clinic if:

- The clinic is not registered with the Department; or
- Effective July 1, 2012, the physician or osteopathic physician has not successfully completed a pain medicine fellowship or pain medicine residency that is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or does not comply with rules adopted by the Board of Medicine or the Board of Osteopathic Medicine.

The license of a physician who does not meet these requirements is subject to disciplinary action by the appropriate medical regulatory board.

Only a physician licensed under ch. 458, F.S., relating to the practice of allopathic medicine, or ch. 459, F.S., relating to the practice of osteopathic medicine, may dispense a controlled substance on the premises of a registered pain-management clinic.

A physician must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. If the physician prescribes or dispenses more than a 72-hour dose of a controlled substance for the treatment of chronic nonmalignant pain, the physician must document in the patient's record the reason for prescribing or dispensing that quantity.

A physician or 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 physician must comply with requirements for counterfeit-resistant blanks and notify the Department, in writing, within 24 hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

The designated physician or designated osteopathic physician must notify the applicable board of the date of termination of employment within 10 days after terminating his or her employment with a pain-management clinic.

Inspection

Sections 458.3265(3) and 459.0137(3), F.S., require the Department to annually inspect a registered pain-management clinic to ensure it complies with this law and applicable rules, unless the clinic is accredited by a nationally recognized accrediting agency approved by the Board of Medicine or the Board of Osteopathic Medicine. This inspection is to include a review of the patient records. During an onsite inspection, the Department must make a reasonable attempt to discuss each violation with the owner or designated physician before issuing a formal written notification.

The owner or designated physician must document in writing any action taken to correct a violation. The Department must verify the corrective action in follow-up visits.

Rulemaking

Sections 458.3265(4) and 459.0137(4), F.S., require the Department to adopt rules necessary to administer the registration and inspection of pain-management clinics which establish the specific requirements, procedures, forms, and fees. The Department must also adopt a rule

defining what constitutes practice by a designated physician at the location for which the physician has assumed responsibility as set forth in ss. 458.3265(1) and 459.0137(1), F.S. When adopting this rule, the Department is to consider: the number of clinic employees; the location of the clinic; the clinic's operating hours; and the amount of controlled substances being prescribed, dispensed, or administered at the pain-management clinic.

The Boards of Medicine and Osteopathic Medicine must adopt a rule establishing the maximum number of prescriptions for Schedule II or Schedule III controlled substances or the controlled substance Alprazolam¹⁷ which may be written at any one pain-management clinic during any 24-hour period. The existing law concerning the Boards adopting rules setting forth standards of practice for physicians practicing in a privately owned pain-management clinic that primarily engages in the treatment of pain by prescribing or dispensing controlled substances is moved into this subsection from the repealed provisions in section 4 of the bill.

Penalties and Enforcement

Sections 458.3265(5) and 459.0137(5), F.S., authorize the Department to impose an administrative fine (up to \$5,000) on a registered pain-management clinic for violating:

- The requirements of s. 458.3265, F.S., and s. 459.0137, F.S., relating to pain-management clinics;
- Chapter 499, F.S., relating to the Florida Drug and Cosmetic Act;
- 21 U.S.C. §§ 301-392, relating to the Federal Food, Drug, and Cosmetic Act;
- 21 U.S.C. §§ 821 et seq., relating to the Comprehensive Drug Abuse Prevention and Control Act;
- Chapter 893, F.S., relating to the Florida Comprehensive Drug Abuse Prevention and Control Act; or
- Rules of the Department.

The bill sets forth factors the Department must consider when determining whether a penalty is to be imposed, and the amount of the fine. Each day a violation continues after the date fixed for termination as ordered by the Department constitutes an additional, separate, and distinct violation.

The Department may impose a fine and, if the pain-management clinic is an owner-operated clinic, revoke or deny a clinic's registration if the designated physician knowingly and intentionally misrepresents actions taken to correct a violation.

The Department may impose an administrative fine of \$5,000 per day on:

- An owner or designated physician who concurrently operates an unregistered pain-management clinic, or
- An owner of a pain-management clinic who fails to apply to register a clinic upon a change-of-ownership.

¹⁷ Alprazolam is the chemical name for Xanax, which is included in Schedule IV.

Sections 5 and 9 amend s. 458.327, F.S., relating to penalties under the practice of medicine, and s. 459.013, F.S., relating to penalties under the practice of osteopathic medicine, to provide that:

- It is a third degree felony to knowingly operate, own, or manage a non-registered pain-management clinic that is required to be registered.
- It is a first degree misdemeanor to knowingly prescribe or dispense, or cause to be prescribed or dispensed, controlled substances in an unregistered pain-management clinic that is required to be registered.

Sections 6 and 10 amend s. 458.331, F.S., relating to the practice of medicine, and s. 459.015, F.S., relating to the practice of osteopathic medicine, to add grounds for which disciplinary action may be taken against a licensee who serves as the designated physician of a pain-management clinic. Additional grounds for disciplinary action are added for any physician who fails to timely notify the Department of the theft of prescription blanks from a pain-management clinic or a breach of other methods for prescribing within 24 hours as required by ss. 458.3265(2) and 459.0137(2), F.S.

Section 7 repeals s. 459.005(3), (4), and (5), F.S., relating to provisions affecting pain-management clinics under the practice of osteopathic medicine, to move these provisions into s. 459.0137, F.S., which is created in Section 8 of the bill.

Section 11 amends s. 893.055, F.S., relating to the prescription drug monitoring program, to require the database that is created and maintained under this program to report database information directly to applicable law enforcement agencies to investigate whether any of a number of specified violations of ch. 893, F.S., has occurred regarding controlled substances in Schedules II-IV. The Department must adopt rules, based on input from various stakeholders, to identify factors that might be indicative of these specified violations. These violations¹⁸ involve:

- A person withholding information from a practitioner from whom the person seeks to obtain a controlled substance or a prescription for a controlled substance that the person making the request has received a controlled substance or a prescription for a controlled substance of like therapeutic use from another practitioner within the previous 30 days.
- A prescribing practitioner:
 - Knowingly assisting a patient, other person, or the owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practice of the prescribing practitioner's professional practice;
 - Employing a trick or scheme in the practice of the prescribing practitioner's professional practice to assist a patient, other person, or the owner of an animal in obtaining a controlled substance;
 - Knowingly writing a prescription for a controlled substance for a fictitious person; or
 - Writing a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing such prescription is to provide a monetary benefit to, or obtain a monetary benefit for, the prescribing practitioner.

¹⁸ This is a summary of the violations. The full text of the offenses is found in ss. 893.13(7)(a)8, 893.13(8)(a), and 893.13(8)(b), F.S.

Section 12 amends s. 893.0551, F.S., to authorize the Department to disclose otherwise confidential and exempt information to the applicable law enforcement agency as required in section 11 of the bill. The law enforcement agency may disclose this information to a criminal justice agency as defined in s. 119.01, F.S., as part of an active investigation that is specific to any of the specified violations of ch. 893, F.S. (See discussion of section 11 of the bill.)

Section 13 provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of the bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the State Constitution.

C. Trust Funds Restrictions:

The provisions of the bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the State Constitution.

D. Other Constitutional Issues:

Article I, Section 23 of the State Constitution provides for an individual's right to privacy. This right has been extended to medical records although there are numerous exceptions where patient consent for the release of the records is not required.¹⁹ These exceptions are generally based upon a compelling state interest in providing for the release without a patient's consent and authorization. The bill provides exceptions to requiring patient consent for the Department to access patient records in pain-management clinics.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Patient records concerning services and medications received through pain-management clinics might be more readily available to the Department without the judicial scrutiny afforded by the requirement to obtain a subpoena prior to accessing the patient records.

¹⁹ Ibid 16.

Information about patients and practitioners may be automatically provided to law enforcement agencies for investigation to determine whether certain violations of the Florida controlled substances act have occurred depending upon the factors identified in the Department's rule.

C. Government Sector Impact:

Regarding the original bills (SB 2272 and SB 2722), the Department indicated that additional rulemaking is required. The Department also indicated that increased disciplinary cases may occur as a result of those bills and that additional budget authority to implement the provisions of those bills was not required. Because of the significant changes that would be made in the bill, it is unknown at this time what, if any, fiscal impact the bill would have on the Department.

Sections 5 and 9 of the bill provide that:

- It is a third degree felony to knowingly operate, own, or manage a non-registered pain-management clinic that is required to be registered.
- It is a first degree misdemeanor to knowingly prescribe or dispense, or cause to be prescribed or dispensed, controlled substances in an unregistered pain-management clinic that is required to be registered.

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the state prison bed impact, if any, of legislation. The CJIC has not yet met to consider the bill. However, a first degree misdemeanor is not punishable by a state prison sentence²⁰ and the third felony is unranked, which means that a first-time offender convicted of only this offense will not score a state prison sentence as the lowest permissible sentence.²¹ Jail bed impact, if any, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ A first degree misdemeanor is punishable by up to 1 year in jail, a fine of up to \$1,000, or imprisonment and a fine. ss. 775.082 and 775.083, F.S.

²¹ An unranked third degree felony is a felony that is not specifically ranked in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S.). An unranked third degree felony is assigned a ranking of level 1 pursuant to s. 921.0023, F.S. A first-time offender who is convicted of this offense and has no additional offenses will score a non-prison sanction, such as probation, as the lowest permissible sentence. The court has the discretion to impose a sentence that is within a sentencing range: a non-prison sanction to up to 5 years in state prison.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 13, 2010:

The CS makes the following substantive changes to CS/SB 2272:

- Changes the title to an act related to controlled substances;
- Provides an exception from registration as a pain-management clinic: The physicians who provide service in the clinic primarily provide chiropractic services and do not dispense controlled substances.
- Provides that a physician or osteopathic physician may not practice medicine in a pain-management clinic if, effective July 1, 2012, the physician does not comply with rules adopted by the applicable medical board.
- Repeals provisions related to pain-management clinics that are currently in sections of law related to rulemaking for the practice of medicine and practice of osteopathic medicine and moves these provisions to the newly created sections of law devoted to pain-management clinics;
- Deletes the provision that sets the venue for a challenge to, and enforcement of, subpoenas and orders related to the DOH's regulation of health professions and occupations;
- Eliminates a new ground upon which the medical boards may take action against the designated physician of a pain-management clinic for failing to have a licensed medical director employed by or under contract with the clinic. Instead, the CS authorizes the medical boards to pursue a summary suspension of the clinic's registration if a designated physician is not practicing at the clinic;
- Requires a pain-management clinic to notify the DOH upon replacement of the designated physician within 10 days after the termination of the predecessor;
- Requires the designated physician to be responsible for the operation of the clinic in compliance with the law;
- The medical boards must adopt rules limiting the number of prescriptions for Alprazolam (Xanax), which is a schedule IV controlled substance, that may be written at a clinic during a 24-hour period;
- Requires the prescription drug monitoring program's database to report information directly to law enforcement agencies to investigate patients who might be 'doctor shopping' or practitioners who might knowingly be assisting patients inappropriately obtain controlled substances;
- Provides for an exception to the confidentiality of certain information in the database for release of the data to law enforcement agencies that might be indicative of the violations; and
- Requires the DOH to adopt rules, based on input from various stakeholders, which identify the factors that might be indicative of these violations to prompt the system to report to the law enforcement agencies.

The CS makes the following substantive changes to CS/SB 2722:

- Changes the title to an act related to controlled substances;
- Provides an exception from registration as a pain-management clinic: The physicians who provide service in the clinic primarily provide chiropractic services and do not dispense controlled substances.
- Provides that a physician or osteopathic physician may not practice not practice medicine in a pain-management if, effective July 1, 2012, the physician has not successfully completed a pain medicine fellowship or residency or does not comply with rules adopted by the applicable medical board.
- Deletes the provision that sets the venue for a challenge to, and enforcement of, subpoenas and orders related to the DOH's regulation of health professions and occupations;
- Requires a pain-management clinic to notify the DOH upon replacement of the designated physician within 10 days after the termination of the predecessor;
- Requires the designated physician to be responsible for the operation of the clinic in compliance with the law;
- Authorizes a pain-management clinic to be owned as a licensed health care clinic in addition to being owned by physicians and osteopathic physicians;
- The medical boards must adopt rules limiting the number of prescriptions for Alprazolam (Xanax), which is a schedule IV controlled substance, that may be written at a clinic during a 24-hour period;
- Requires the prescription drug monitoring program's database to report information directly to law enforcement agencies to investigate patients who might be 'doctor shopping' or practitioners who might knowingly be assisting patients inappropriately obtain controlled substances;
- Provides for an exception to the confidentiality of certain information in the database for release of the data to law enforcement agencies that might be indicative of the violations; and
- Requires the DOH to adopt rules, based on input from various stakeholders, which identify the factors that might be indicative of these violations to prompt the system to report to the law enforcement agencies.

B. Amendments:

None.

"ARTICLE 5"

ORDINANCE NO. 1033

AN ORDINANCE OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, AMENDING SATELLITE BEACH CITY CODE TO PROVIDE FOR REGULATION OF PAIN MANAGEMENT CLINICS; MAKING LEGISLATIVE FINDINGS; AMENDING DEFINITIONS CONTAINED IN SECTION 30-107, SATELLITE BEACH CITY CODE; CREATING A NEW CONDITIONAL USE IN SECTION 30-416(c), SATELLITE BEACH CITY CODE; CREATING NEW SECTION 30-621, SATELLITE BEACH CITY CODE, REGULATING LOCATION AND REQUIREMENTS FOR OPERATION OF PAIN MANAGEMENT CLINICS; PROVIDING AN EFFECTIVE DATE. (SECOND READING)

WHEREAS, the City Council finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety, and welfare of the residents of the City; and

WHEREAS, the City Council has been made aware by news reports, both in-state and out-of-state, as well as a recent interim grand jury report, that a pattern of illegal drug use and distribution has been associated with pain management clinics in South Florida which dispense on-site narcotic drugs; and

WHEREAS, the newspapers and interim grand jury report have published information describing a "pipeline" of drugs being "trafficked" from South Florida pain management clinics to users in other states, including but not limited to, Kentucky, West Virginia, and Ohio; and

WHEREAS, since the generation of those news reports and the grand jury report, many local governments in South Florida have adopted, or are in the process of adopting, ordinances to regulate these pain management clinics; and

WHEREAS, as a result of the adoption of these ordinances and the heretofore lax regulation of these clinics, pain management clinics have migrated north from South Florida; and

WHEREAS, the threat of increased crime associated with these pain management clinics is very significant and could undermine the economic health of the City's current redevelopment efforts; and

WHEREAS, the secondary effects of pain management clinics, including increased traffic, recurring parking problems, large percentages of out-of-state patrons, and increased and disproportionate demands on law enforcement, far outweigh the benefits of such businesses in the City, which could undermine the City's current redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution, and ancillary activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, and

to encourage safer controlled substance prescription decisions and reduce the number of prescription drug overdoses, deaths, and related crimes; and

WHEREAS, it is the intent of this ordinance not to interfere with the legitimate use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at pain medication clinics as defined herein, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors, and businesses are more vulnerable to criminal activities, despite the provision of law enforcement services; and

WHEREAS, the Planning and Zoning Advisory Board, after public hearing, finds the contents of this ordinance to be consistent with the land development regulations and existing development within the area covered by this amendment and recommends approval of same; and

WHEREAS, the City Council, following all public hearings required by law preliminary to the adoption of this ordinance, has found and determined that this amendment is consistent with the City's development, its comprehensive plan and land development regulations, and otherwise promotes the general health, safety, and welfare of its residents and other members of the public.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The foregoing recitations are ratified and incorporated herein by reference.

SECTION 2. Section 30-107, Satellite Beach City Code, is amended to create or amend the following definitions:

Sec. 30-107. Definitions.

* * * * *

Drug Store shall mean a retail pharmacy, with or without a drive-thru lane, unless otherwise specified in this Code.

* * * * *

Medical Office shall mean a professional office that provides services to the public by physicians, dentists, surgeons, chiropractors, pharmacists, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, or others who are duly licensed to practice their respective professions in the State of Florida, as well as other persons, including technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner. Retail pharmacies staffed by pharmacists that

sell prescription drugs, nonprescription drugs, or both, as well as other goods for sale to the public are not medical offices for purposes of this Code. Pain management clinics are medical offices for purposes of this Code.

* * * * *

Pain Management Clinic shall mean any office, center, clinic, or other facility unaffiliated with any hospital, hospice, and/or facility for the treatment of the terminally ill in Brevard County, Florida, for which its primary focus, advertising, or concentration is providing, prescribing, and/or dispensing of medication (i) to persons with complaints of pain, chronic or otherwise, or (ii) with the intent to reduce or manage pain.

* * * * *

Retail Pharmacy shall mean a business offering goods or services for retail sale and on-site dispensing of prescription drugs, nonprescription drugs, or both.

* * * * *

SECTION 3. Section 30-416(c) (Commercial District, Conditional Uses), Satellite Beach City Code, is amended by creating a new subsection (16) to read as follows:

(16) In addition to complying with the general conditional use requirements of this Code, pain management clinics shall comply with the provisions Section 30-621 of this Code.

SECTION 4. A new Section 30-621, Satellite Beach City Code, regarding Pain Management Clinics is hereby created to read as follows:

Sec. 30-621. Pain Management Clinics

(a) Pain management clinics shall be allowed only in the C, Commercial District of the City and shall be prohibited as home occupations. Pain management clinics are subject to the following supplemental regulations:

(1) On-site sale, provision, or dispensing of those substances identified in Schedules I, II, III and IV in §893.03, Florida Statutes, and those identified in and by Sections 893.035 and 893.0356, Florida Statutes, is prohibited, unless otherwise expressly permitted by state or federal law.

(2) Any parking demand created by a pain management clinic shall not exceed the parking spaces located or allocated on site, as required by the City's parking regulations. An applicant shall be required to demonstrate that on-site traffic and parking attributable to the pain management clinic will be sufficient to accommodate traffic and parking demands generated by the pain management clinic, based upon a current traffic and parking study prepared by a certified

professional. Traffic and parking analyses shall be predicated in part upon traffic and parking impacts from existing pain management clinics in Florida. The source of any such information shall be provided to the City for purposes of verification. City staff shall be required to verify the information contained in traffic and parking study(ies) with the appropriate official(s) of the local government(s) where the comparable information is derived.

(3) No pain management clinic shall limit the form of payment for goods or services to cash only.

(4) No pain management clinic shall be located within 1,000 feet of any school, as defined in section 10-36, Satellite Beach City Code.

(5) Pain management clinics may operate daily during the hours of 8:00 a.m. to 8:00 p.m.

(6) Each business day, on a form promulgated by the City, pain management clinics shall provide to the Satellite Beach Police Department a daily summary containing the following information from the prior business day:

a. The total number of prescriptions written that day by each person authorized by law at the pain management clinic to prescribe drugs;

b. The total number of doses of drugs sold and/or dispensed by the pain management clinic that day (including samples), indicating which doses were sold or dispensed; the person prescribing same; and the manner of payment by each person who was dispensed drugs at said clinic that day;

c. The total number of persons seen by the pain management clinic that day; and

d. The state of residence of each person to whom drugs were prescribed or dispensed that day.

Information required under this section shall be provided under oath by the medical director and/or the person prescribing or dispensing the drugs. To the extent such information is not otherwise required to be maintained by any other law, the back-up for the required daily summary shall be maintained by the pain management clinic for 24 months.

(7) Each application for a certificate of occupancy or business tax receipt for a pain management clinic shall disclose each owner and operator of such clinic, and the individual principals of any entity that owns such clinic. Such information shall be updated within 30 days of any change in ownership or the principals of any owner.

(8) No pain management clinic shall be wholly or partially owned by, or have any contractual relationship (whether as a principal, partner, officer, member, managing member, employee, independent contractor, or otherwise) with any physician, pharmacist, or any other person who prescribes drugs and who, within five years prior to the receipt of any application for a certificate of occupancy or business tax receipt, (i) has been suspended, had his or her license revoked, or been subject to disciplinary action for prescribing, dispensing, administering, providing, supplying, or selling any controlled substance in violation of any state, federal, or similar law where such person is licensed to practice; (ii) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law where such person is licensed to practice related to drugs or alcohol, specifically including but not limited to, prescribing, dispensing, administering, providing, supplying, or selling any controlled substance; (iii) has been suspended, had his or her license revoked, or been subject to disciplinary action by any state, federal, or other governmental entity where such person is licensed to practice; (iv) has had any state, federal, or other governmental entity where such person is licensed to practice take any action against such person's license as a result of dependency on drugs or alcohol; or (v) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude.

(9) No pain management clinic shall be wholly or partially owned by, or have as a principal, partner, officer, member, managing member, or otherwise where the owner is an entity, any person who (i) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law where related to drugs or alcohol, or (ii) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude.

(10) No pain medication clinic shall employ any person who has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude within any five-year period before any application for a certificate of occupancy or business tax receipt. Any application for a certificate of occupancy or business tax receipt shall include an affidavit, under oath, by the medical director, attesting that neither the medical director nor any other person employed in any capacity by the pain management clinic, whether an employee, independent contractor, or otherwise, (i) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law related to drugs or alcohol, specifically including but not limited to, prescribing, dispensing, administering, providing, supplying, or selling any controlled substance; or (ii) has been convicted of, pled *nolo contendere* to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude. The failure to provide the required affidavit shall result in the automatic revocation of the pain management clinic's right to operate in the City.

(11) A pain management clinic shall be operated by a medical director

who is a Florida-licensed physician, board-certified in pain medicine.

(12) In order to obtain a certificate of occupancy or business tax receipt, a pain management clinic shall provide with its application (i) an inventory of diagnostic equipment to be located at the clinic, (ii) a natural disaster management plan, and (iii) a floor plan showing the location and nature of adequate security measures, including those required by the State of Florida for controlled substances, to safeguard all drugs to be dispensed in the course of its business.

(b) Any remedies related to enforcement of the regulations recited herein are in addition and supplemental to those existing by law.

SECTION 5. Severability Clause. In the event a court of competent jurisdiction shall hold or determine that any part of this ordinance is invalid or unconstitutional, the remainder of the ordinance shall not be affected thereby; and it will be presumed that the City Council for the City of Satellite Beach did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the City Council would have enacted the remainder of this ordinance without said invalid and unconstitutional provision, thereby causing said remainder to remain in full force and effect.

SECTION 6. Repeal of Inconsistent Provisions. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. Effective Date. This ordinance shall become effective immediately upon its adoption.

SECTION 8. This ordinance was duly passed on first reading at a regular meeting of the City Council on the 2nd day of June 2010 and adopted on the second and final reading at the regular meeting of the City Council on the _____ day of _____, 2010.

JOSEPH R. FERRANTE, Mayor

ATTEST:

Barbara Montanaro, CMC, City Clerk

"ARTICLE 6"

SATELLITE BEACH POLICE

510 CINNAMON DRIVE
SATELLITE BEACH, FL 32937-3197

Telephone (321) 773-4400
Fax (321) 773-5414



INCORPORATED 1957

LIONEL A. COTE
Chief of Police

#8
4-21-10

TO: MICHAEL P. CROTTY, CITY MANAGER
FROM: BRAD M. HODGE, COMMANDER *BH*
DATE: APRIL 8, 2010
RE: PAIN MANAGEMENT CLINICS

I have attached an overview of the issues concerning the rapid growth of unregulated pain management clinics in South Florida. I have included the efforts by the State of Florida as well as positions taken by several South Florida counties and cities due to the increase in crime, fatalities, etc. Lastly, I have outlined the issues occurring within Brevard County and how they are generally impacting local law enforcement and our community.

SATELLITE BEACH POLICE

510 CINNAMON DRIVE
SATELLITE BEACH, FL 32937-3197

Telephone (321) 773-4400
Fax (321) 773-5414



INCORPORATED 1957

LIONEL A. COTE
Chief of Police

PAIN MANAGEMENT CLINICS

#8

4-21-10

BACKGROUND

In 2009, a Broward County Grand Jury was empanelled to investigate and report on the proliferation of pain management clinics both in Broward County and in the south Florida area. This report clearly shows an alarming increase in the growing number of unregulated "pill mills" and the prescriptions issued or dispensed through these types of clinics. In less than two years the number of pain clinics in South Florida rose from 4 to 176. These clinics are currently responsible for prescribing over 9 million doses of Oxycodone every 6 months. Additionally, cost increases in the judicial system including law enforcement and corrections, is consistently increasing with the growing number of pain clinics in south Florida. In the 17th Judicial Circuit, 50% of illegal drug possession cases are individuals charged with possession of illegal prescription medication.

The primary concern is that because these clinics are not subject to many of the regulations that monitor for potential prescription violations by physicians or pharmacies, they offer easy access for the addict or dealer to obtain prescription medication on a regular basis.

LOCAL IMPACT

Brevard County and Satellite Beach are no exceptions. In Satellite Beach the use of prescription medications obtained through pain management clinics or purchased illegally from a supplier who used an unregulated clinic is very much an immediate concern.

Percentage of total drug arrests in Satellite Beach that were for illegal prescription pills:

- 2008 - 27%
- 2009 - 34%
- 2010 - 42%

Several recent suspects arrested for a rash of home burglaries admitted to needing money to buy more pills or to breaking into homes looking for pills. Our investigators are receiving information from confidential sources regarding the sale of prescription medication, which was obtained from pain clinics in West Palm Beach and Orange County. This is the common theme among law enforcement agencies throughout the county. Pills are permeating everything. Brevard County Sheriff's Office reports that at this time there are currently no pain management clinics that are suspected of illegal activity within Brevard County. The primary concern, however, is that these clinics will seek out new locations as the loopholes close in south Florida through the enactment of ordinances as in the case in Palm Beach County, Hypoluxo, Dania Beach and Coconut Creek.

CURRENT LEGISLATION

The long awaited Prescription Drug Monitoring Program (currently in effect in 32 states) was passed in Florida on July 1, 2009 and to be effective in December 1, 2010. There is a very real concern regarding the lack of funding for this program. Furthermore, questions exist as to whether the new law will in fact deter such clinics *after* they have been established. Additionally, there appear to be a number of loopholes to the legislation that will actually benefit drug addicts and traffickers, who will only need to make minor adjustments and carry on with business as usual.

BREVARD COUNTY EFFORTS

Presently, members of the Brevard County Sheriff's Office are working with the County Attorney's office to develop a county ordinance or zoning solution to restrict/regulate pain management clinics. Morris Richardson of the Brevard County Attorney's Office has already met with Planning and Zoning officials to provide them with the Grand Jury report and the concerns of local law enforcement. A meeting has been scheduled for April 12th with Commissioner Check Nelson to determine how to proceed.

RECOMMENDATION

Given the overwhelming facts presented regarding the risks that unregulated pain management clinics pose to any community, it is in the best interest of Satellite Beach to take a proactive approach to this issue. Waiting on county officials to take action to protect our residents may be time consuming and with lost time comes the potential for a clinic to move in to our city. It is my recommendation that members of the City Council consider an ordinance, or at the very least a moratorium on these unregulated clinics, which should allow the county sufficient time to take appropriate action.

Michael Crotty

From: Lionel Cote (lcote@satellitebeach.org)
Sent: Friday, March 05, 2010 10:48 AM
To: Michael Crotty (E-mail)
Cc: Brad Hodge (E-mail); Jeff Pearson (E-mail)
Subject: FW: Lt. Governor Kottkamp Joins Lawmakers to Announce Legislation to Continue Cracking Down on Pill Mills

Chief Lionel A. Cote
Satellite Beach Police Department
Phone: (321) 773-4400
Email: lcote@satellitebeach.org

-----Original Message-----

From: Jack Parker (mailto:jack.parker@bcso.us)
Sent: Thursday, March 04, 2010 12:16 PM
To: Bryan Holmes (E-mail); Chief Bill Berger - Palm Bay Police Department; Chief Bob Sullivan - Indian Harbour Beach Police Department; Chief Brian Lock - West Melbourne Police Department; Chief Donald Carey - Melbourne Police Department; Chief Jack King - Melbourne Village Police Department; Chief John Shockey - Rockledge Police Department; Chief Lionel Cote - Satellite Beach Police Department; Chief Tony Bollinger - Titusville Police Department; Chief Troy Morris - Indian River Police Department; Joe Hellebrand (E-mail); Mark Klayman (E-mail); Michael Brewer (E-mail); Ron Krueger (E-mail)
Subject: FW: Lt. Governor Kottkamp Joins Lawmakers to Announce Legislation to Continue Cracking Down on Pill Mills

-----Original Message-----

From: Governor's Press Office
Sent: Thursday, March 04, 2010 10:29 AM
Subject: Lt. Governor Kottkamp Joins Lawmakers to Announce Legislation to Continue Cracking Down on Pill Mills

FOR IMMEDIATE RELEASE
MARCH 4, 2010

CONTACT:
GOVERNOR'S PRESS OFFICE, (850) 488-5394

**Lt. Governor Kottkamp Joins Lawmakers to Announce
Legislation to Continue Cracking Down on Pill Mills**
~ Tighter restrictions, regulations for operating pain clinics ~

TALLAHASSEE – Lt. Governor Jeff Kottkamp, as part of his role overseeing the Governor's Office of Drug Control, today held a press conference with bill sponsors Senator Mike Fasano and Representative Marcelo Llorente and Director Bruce Grant of

3/5/2010

4 of 21

the Governor's Office of Drug Control to express his support of their proposed legislation that will help to eliminate criminal pain clinics, or "pill mills," in Florida. Senator Fasano and Representative Llorente announced Senate Bills 1722 and 2272 and House Bill 1409 which build upon legislation Governor Crist signed last year legislation that created a Prescription Drug Monitoring Program and laid the groundwork for regulatory oversight of pain clinics.

"Florida's pill mills are now the primary source of an unchecked flood of painkillers and anti-anxiety medications that fuel a large percentage of drug-related crime, addiction, hospitalizations, and overdoses in our state," said Lt. Governor Kottkamp. "We must continue to investigate and close down illegal prescription drug distributors. With federal, state, and local governments collaborating as partners, Governor Crist and I are confident we can save lives and make Florida safer for our families and friends."

"Florida's aggressive response could not come sooner," added Director Grant. "We must take action now with the help of law enforcement, regulation, and the passage of stronger legislation to eliminate these criminal pill mills throughout our state."

The proposed legislation would mandate training for all physicians prescribing controlled substances, allow the Prescription Drug Monitoring Program to provide information to law enforcement on possible illegal medical practices, and prohibit felons and negligent physicians from owning pain management clinics. Additionally, the bills provide enhanced penalties for physicians operating outside the scope of accepted medical practice and strengthen the regulation of pain clinics.

"This legislation will significantly improve public health and safety by enhancing the state's ability to shut-down these criminal pill mills and prosecute those who are breaking our laws and health regulations," said Senator Fasano. "It is a great honor to work with Lt. Governor Kottkamp and Representative Llorente to fight predators who hide behind the guise of supposedly legal medical practices and prey upon our fellow Floridians."

"This legislation goes one step forward in eradicating pill mills from Florida and the senseless loss of life being caused by the illegal prescribing and dispensing of controlled substances," added Representative Llorente. "I am honored to continue to work with Lt. Governor Jeff Kottkamp and Senator Mike Fasano in protecting Floridians from the unscrupulous practices of some doctors, clinics, and healthcare facilities."

According to the Governor's Office of Drug Control, six Floridians die each day from a prescription drug overdose -- five times as many deaths as from all illegal drugs combined. The number of drug overdose deaths in Florida increased by 77 percent from 2003 to 2008, and each one involved at least one prescription drug. Often the illegal prescription drug of choice is oxycodone, a very strong narcotic commonly prescribed to relieve moderate to severe pain. Nearly all of the top 50 prescribers of oxycodone in the United States are located in Florida.

A recent Broward County grand jury reported every three days, a new "pill mill" opens in Broward and Palm Beach counties. In the last six months of 2008 alone, such clinics dispensed nearly 9 million doses of oxycodone in South Florida -- the equivalent of more than two doses for every man, woman and child in Miami-Dade, Broward and Palm Beach counties.

State Surgeon General Dr. Ana Viamonte Ros, Secretary Tom Arnold of the Agency for Health Care Administration, Secretary Douglas Beach of the Florida Department of Elder

Affairs, and Commissioner Gerald Balley of the Florida Department of Law Enforcement also attended the announcement.

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3/5/2010

A. DE 71

Michael Crotty

From: Lionel Cole [lcote@satellitebeach.org]
Sent: Tuesday, February 16, 2010 8:46 PM
To: 'Douglas Waller'
Cc: Brad Hodges (E-mail)
Subject: RE: Pain Management Clinics
Doug, Thank you for the information, Chief Lee Cole

Chief Lionel A. Cole
Satellite Beach Police Department
Phone: (321) 773-4400
Email: lcote@satellitebeach.org

-----Original Message-----

From: Douglas Waller [mailto:douglas.waller@bcso.us]
Sent: Tuesday, February 16, 2010 1:45 PM
To: lcote@satellitebeach.org
Cc: Jack Parker
Subject: FW: Pain Management Clinics

Chief, just FYI on a media story from Tennessee regarding the topic of concern.
Thanks! Doug

East Tennessee's OxyContin Epidemic Traced to Florida

KNOXVILLE (WATE) -- Millions of Americans are hooked on prescription drugs across the nation. In fact, latest numbers indicate that prescription drugs are being abused more now than illegal drugs like cocaine or heroin. The most popular prescription drug being abused in East Tennessee is OxyContin, a powerful prescription drug that's got an addictive grip. "It will ruin your life real fast and you have no idea what you are getting yourself into," said a former addict, Daniel Orndorff. "I still cannot shake it from my head. I think about the high that I experienced," said another former addict, Christian Hendricks. Both men say they were hooked on OxyContin for years -- Orndorff for nine years and Hendricks for three. "Before long I was using it everyday," said Hendricks. "Heroin is a little stronger, but you can get just as high on an 'Oxy,'" said Orndorff. OxyContin provides the same high, but it's up to three times more deadly than illegal drugs. The drug is prescribed to be taken orally by someone in severe pain, like cancer patients. Once in the wrong hands, it's crushed up then either snorted or injected to get the high. An 80-milligram is the largest dose available in pill form. On the streets, that sells for about \$1 per milligram, so one an 80 milligram pill costs \$80 or more. "East Tennessee's problem is definitely Florida," said FBI Special Agent Michael MacLean. "It's very rare that we come across, as far as prescription drugs that are not coming out of Florida" said Agent MacLean. The bulk of the supply is not coming private doctors, but from pain

2/17/2010

7.671

clinics sprouting up at an alarming rate.

-----Original Message-----

From: Jack Parker
Sent: Thursday, February 04, 2010 3:32 PM
To: Douglas Waller
Subject: Fwd: Pain Management Clinics

Begin forwarded message:

From: "Lionel Cote" <lcote@satellitebeach.org>
Date: February 4, 2010 12:03:50 PM EST
To: <mcrotty@satellitebeach.org>
Subject: RE: Pain Management Clinics
Reply-To: <lcote@satellitebeach.org>

Dear Mr. Crotty, The South Florida pain management clinics potential re-location to other Northern locations is of great concern to us and is being monitored by DBA, FBI and other law enforcement entities. We anticipate some will be coming to Brevard County, and the Sheriff's Department is in contact with FDLE and will be monitoring this process. I do not believe there is anything we can or should do at this time. Chief Lionel Cote

Chief Lionel A. Cote
Satellite Beach Police Department
Phone: (321) 773-4400
Email: lcote@satellitebeach.org

-----Original Message-----

From: Michael Crotty [mailto:mcrotty@satellitebeach.org]
Sent: Thursday, February 04, 2010 11:46 AM
To: Lionel Cote (E-mail)
Cc: Barbara Montanaro (E-mail)
Subject: Pain Management Clinics

<< File: 20100204110428250.pdf >> << File: 20100204112615546.pdf >>
Lionel--South Florida governments have encountered challenges with the increasing numbers of Pain Management Clinics. Some have adopted moratoriums on the establishment of these type of clinics. With tightening regulations and/or moratoriums, it was reported that the clinics are merely moving "north".

Is this an issue that we should be concerned about? Have any other Police Departments in the County dealt with this issue?

Attached is an Ordinance from a South Florida community establishing a moratorium (the ordinance indicates that the municipality "has been made aware of a pattern of illegal drug use and distribution associated the recent proliferation o pain management clinics") and information from the FL Dept. of Health on Pain Management Clinics.

2/17/2010

82671

The attachments will assist as you review this issue and you might find it useful to contact some Chiefs in South FL, who have dealt with this. Also, the FL Police Chiefs Assoc. might have info on this subject. Please look into and report back. Thanks.

2/17/2010

9-571

Startfile: Pain Management Clinics
(2010)

Michael Crotty

From: Michael Crotty [mrcrotty@satellitebeach.org]
Sent: Thursday, February 04, 2010 11:46 AM
To: Lionel Cote (E-mail)
Cc: Barbara Montanaro (E-mail)
Subject: Pain Management Clinics



20100204110428252010020411261554
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Lionel--South Florida governments have encountered challenges with the increasing numbers of Pain Management Clinics. Some have adopted moratoriums on the establishment of these type of clinics. With tightening regulations and/or moratoriums, it was reported that the clinics are merely moving "north".

Is this an issue that we should be concerned about? Have any other Police Departments in the County dealt with this issue?

Attached is an Ordinance from a South Florida community establishing a moratorium (the ordinance indicates that the municipality "has been made aware of a pattern of illegal drug use and distribution associated the recent proliferation o pain management clinics") and information from the FL Dept. of Health on Pain Management Clinics.

The attachments will assist as you review this issue and you might find it useful to contact some Chief's in South FL, who have dealt with this. Also, the FL Police Chiefs Assoc. might have info on this subject. Please look into and report back. Thanks.

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TOWN OF HYPOLUXO
ORDINANCE NO. 179

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HYPOLUXO, FLORIDA, ESTABLISHING A MORATORIUM UPON THE ACCEPTANCE OF ZONING APPLICATIONS OR REQUESTS FOR ZONING APPROVAL FOR PAIN MANAGEMENT CLINICS, AS DEFINED BY FLORIDA STATUTE, FOR A PERIOD OF ONE YEAR OR UNTIL SUCH TIME AS THE TOWN ADOPTS REGULATIONS GOVERNING THIS USE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Hypoluxo determines that it is in the best interests of its residents, businesses and visitors to enact sufficient land development regulations to ensure their health, safety and welfare; and

WHEREAS, through various law enforcement and news media reports, the Town Council has been made aware of a pattern of illegal drug use and distribution associated with the recent proliferation of pain management clinics that often dispense narcotics on site; and

WHEREAS, on December 8, 2009, Palm Beach County adopted a Zoning in Progress pending the adoption of an ordinance imposing a moratorium upon the acceptance of zoning applications and requests for zoning approval for pain management clinics ("Moratorium Ordinance") to allow sufficient time to study the issue and enact appropriate regulations governing this use; and

WHEREAS, at the urging of Palm Beach County, and in an effort to prevent an influx of new pain management clinics within the Town, on December 16, 2009, the Town Council similarly adopted a Zoning in Progress pending the adoption of a Moratorium Ordinance to allow sufficient time to develop regulations applicable to pain management clinics; and

WHEREAS, the intent of this Ordinance is not to interfere with the legitimate use of controlled substances, but rather to regulate the operation of pain management clinics and the on-site dispensing of narcotics to the extent permitted by law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HYPOLUXO, FLORIDA as follows:

Section 1. The foregoing recitals are ratified as true and correct and are incorporated herein.

11 of 71

1 Signature Page for Ordinance 179

2
3 Passed on first reading this _____ day of _____, 2010.

4
5 APPROVED:
6
7 Kenneth M. Schultz
8 Mayor Kenneth M. Schultz

AYE NAY COUNCIL:

Vice Mayor Michael C. Brown

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10
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12
13

✓
Karen C. Miller
Karen C. Miller

14 ATTEST:
15
16
17 Barbara L. Searls
18 Barbara L. Searls, Town Clerk

Daniel L. Monahan

William J. Smith

Richard J. Roney

19
20
21
22 Passed on second and final reading this _____ day of _____, 2010.

23
24
25 APPROVED:
26
27
28 Mayor Kenneth M. Schultz

AYE NAY COUNCIL:

Vice Mayor Michael C. Brown

29
30
31
32
33

Karen C. Miller

34 ATTEST:
35
36
37
38 Barbara L. Searls
39 Barbara L. Searls, Town Clerk

Daniel L. Monahan

William J. Smith

Richard J. Roney

40
41
42 Approved as to form and legal sufficiency:
43
44
45 Leonard G. Rubin
Leonard G. Rubin, Town Attorney

130871



Charlie Crist
Governor

Ann M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

ATTENTION: PAIN MANAGEMENT CLINICS

The Pain Management Clinic Registration Application will be available on December 16, 2009. Visit our website (Instructions below) to complete and print the registration application. Return the completed application and cashier's check or money order for \$150.00 (payable to: Florida Department of Health) to the address listed in the application instructions. You will be contacted by a Department representative if there are issues with your application. Otherwise, you will receive your registration by mail. The deadline for registration is January 4, 2010.

To determine if your clinic is required to register, review Section 458.309(4) through (6), Florida Statutes for Medical Doctors (MD) or Section 459.005(3) through (5), Florida Statutes for Osteopathic Medical Doctors (DO). These are available on the Board of Medicine website.

A Medical Doctor (MD) or Osteopathic Medical Doctor (DO) is subject to discipline if they practice in a pain management clinic that is required to register with the Department of Health and has not done so.

To Download the Application:

Visit our website at www.FLHealthSource.com and click on *Licensee/Provider*. Once there, select *Medicine* from the drop down box in the upper right hand corner and click *Go*. You are now at the Board of Medicine Web Page. Click on the *Pain Clinic Registration and Inspection* link to access the application, which will be available on December 16, to complete and print.

Don't forget to attach a cashier's check or money order for \$150.00, payable to the Florida Department of Health, when sending in your application.

FAQ's

Pain Clinic Registration and Inspection Program

What the law says:

Please read the entire law on our website at

http://www.doh.state.fl.us/mqa/medical/no_pain.html. The below is only a summary of the registration process.

All privately owned pain-management clinics/facilities/offices, not licensed under Chapter 395, which advertise in any medium for any type of pain-management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications must register. Each clinic location must register separately even if the clinic/facility/office is operated under the same business name or management as another. The clinic must designate a physician, who practices pain management at the clinic, to register.

A privately owned clinic, facility, or office that advertises in any medium for any type of pain-management services or employs one or more physicians who are primarily engaged in the treatment of pain by prescribing or dispensing controlled substances is exempt from the registration provisions if the majority of the physicians who provide services in the clinic, facility, or office primarily provide surgical services.

When does the clinic/facility/office have to be registered?

January 4, 2010.

What happens if I am an MD or DO practicing in a pain management clinic that should register but hasn't registered by January 4, 2010?

A Medical Doctor (MD) or Osteopathic Medical Doctor (DO) is subject to discipline if they practice in a pain management clinic that is required to register with the Department of Health and has not done so.

When will an application be available and how much will it cost?

The application will be ready on-line on December 16, 2009. Stay tuned to the Board of Medicine web site for additional information. The web site can be found at www.FLHealthSource.com. Click on *Provider/Licensee*. Once there, click on the drop down box in the upper right hand corner and select *Medicine* and click *Go*. Then click on the *Pain Clinic Registration and Inspection Program* link. Return the completed application and cashier's check or money order for \$150.00 (payable to: Florida Department of Health) to the address listed in the application instructions.

Does the clinic/facility/office have to be inspected?

No accrediting organizations have yet been approved by the Boards of Medicine and Osteopathic Medicine. Therefore, the "Inspection" option is the only option available in Section III of the application. Inspections are not conducted before registration, but will occur within a year of registration. (The inspection fee is not due until the time of the inspection.)

What are the requirements for registering?

The application will have full instructions, including the requirements for registration and copies of relevant statutes and rules.

Am I exempt from registering as a pain clinic?

If the clinic/facility/office is registered under Chapter 395, Florida Statutes, you are exempt from registering. You are also exempt if the majority of the physicians who provide services in the clinic/facility/office primarily provide surgical services (see "What the law says" above).

To see the types of facilities licensed under Chapters 395, Florida Statutes, go to <http://www.leg.state.fl.us/statutes/index.cfm>.

If I would like to participate or send documentation for the Board's consideration during the rule making process, how would I do that?

Please go to our web site (see directions below) for meeting dates. Please note that we request materials for a meeting be submitted 1 month prior to the meeting. The reason for this is to allow the Board Member time to read the materials by the meeting date.

Where can I find more information as it becomes available?

You can go to the Board of Medicine's web site for additional information. The web site can be found at www.FLHealthSource.com. Click on *Provider/Licensee*. Once there, click on the drop down box in the upper right hand corner and select *Medicine* and click *Go*. Then click on the *Pain Clinic Registration and Inspection Program* Link.

Another option is to go to: <http://flcms.doh.state.fl.us/mailman/listinfo/boardofmedicine> and join a no cost email program to automatically receive updates.

Board of Medicine
468.309 Rulemaking authority.—

(4) All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which advertise in any medium for any type of pain-management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department by January 4, 2010, unless that clinic is licensed as a facility pursuant to chapter 395. A physician may not practice medicine in a pain-management clinic that is required to but has not registered with the department. Each clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another clinic. If the clinic is licensed as a health care clinic under chapter 400, the medical director is responsible for registering the facility with the department. If the clinic is not registered pursuant to chapter 395 or chapter 400, the clinic shall, upon registration with the department, designate a physician who is responsible for complying with all requirements related to registration of the clinic. The designated physician shall be licensed under this chapter or chapter 459 and shall practice at the office location for which the physician has assumed responsibility. The department shall inspect the clinic annually to ensure that it complies with rules of the Board of Medicine adopted pursuant to this subsection and subsection (5); unless the office is accredited by a nationally recognized accrediting agency approved by the Board of Medicine. The actual costs for registration and inspection or accreditation shall be paid by the physician seeking to register the clinic.

(5) The Board of Medicine shall adopt rules setting forth standards of practice for physicians practicing in privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications. Such rules shall address, but need not be limited to, the following subjects:

- (a) Facility operations;
- (b) Physical operations;
- (c) Infection control requirements;
- (d) Health and safety requirements;
- (e) Quality assurance requirements;
- (f) Patient records;
- (g) Training requirements for all facility health care practitioners who are not regulated by another board;
- (h) Inspections; and
- (i) Data collection and reporting requirements.

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. Chronic nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the

disease or the injury that is the cause of the pain or more than 90 days after surgery.

(6) A privately owned clinic, facility, or office that advertises in any medium for any type of pain-management services or employs one or more physicians who are primarily engaged in the treatment of pain by prescribing or dispensing controlled substances is exempt from the registration provisions in subsection (4) if the majority of the physicians who provide services in the clinic, facility, or office primarily provide surgical services.

Section 4. Section 4. Subsections (3), (4), and (5) are added to section

**Board of Osteopathic Medicine
459.006 Rulemaking authority.—**

(3) All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which advertise in any medium for any type of pain-management services, or employ a physician who is licensed under this chapter and who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department by January 4, 2010, unless that clinic is licensed as a facility under chapter 395. A physician may not practice osteopathic medicine in a pain-management clinic that is required to but has not registered with the department. Each clinic location shall be registered separately regardless of whether the clinic is operated under the same business name or management as another clinic. If the clinic is licensed as a health care clinic under chapter 400, the medical director is responsible for registering the facility with the department. If the clinic is not registered under chapter 395 or chapter 400, the clinic shall, upon registration with the department, designate a physician who is responsible for complying with all requirements related to registration of the clinic. The designated physician shall be licensed under chapter 458 or this chapter and shall practice at the office location for which the physician has assumed responsibility. The department shall inspect the clinic annually to ensure that it complies with rules of the Board of Osteopathic Medicine adopted pursuant to this subsection and subsection (4) unless the office is accredited by a nationally recognized accrediting agency approved by the Board of Osteopathic Medicine. The actual costs for registration and inspection or accreditation shall be paid by the physician seeking to register the clinic.

(4) The Board of Osteopathic Medicine shall adopt rules setting forth standards of practice for physicians who practice in privately owned pain management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications. Such rules shall address, but need not be limited to, the following subjects:

- (a) Facility operations;
- (b) Physical operations;
- (c) Infection control requirements;

- (d) Health and safety requirements;
- (e) Quality assurance requirements;
- (f) Patient records;
- (g) Training requirements for all facility health care practitioners who are not regulated by another board;
- (h) Inspections; and
- (i) Data collection and reporting requirements.

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(5) A privately owned clinic, facility, or office that advertises in any medium for any type of pain-management services or employs one or more physicians who are primarily engaged in the treatment of pain by prescribing or dispensing controlled substances is exempt from the registration provisions in subsection (3) if the majority of the physicians who provide services in the clinic, facility, or office primarily provide surgical services.

Michael Crotty

To: Lionel Cole (E-mail)
Cc: Barbara Montanaro (E-mail)
Subject: Pain Management Clinics



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town57@kennethcityfl.org; town57@verizon.net; townclerk-havana@mchsf.com;
twambach@pbogov.org; vcagnina@coconutcreek.net; vgranola@miamigardens-fl.gov; vventura@city-
flperca.com; wendyc@lauderdalelakes.org; Bill Ackles; william.hoover@tampagov.net;
yvoone.hamilton@nbvillage.com; ywhite@cityofpsl.com; zloperena@cityofpsl.com

Subject: *****SPAM***** FABTO FYI - Dept. of Health Requirements for Pain Management

Hi everybody,

Attached is information I recently received from the Department of Health regarding new requirements for Pain Management Clinics. Hope this is helpful.

Bill

Pres FL Assoc
Bus Tax officials
Received via e-mail
1/5/10
William R. Ackles, CBTO
City of Bradenton
101 Old Main Street
Bradenton, FL 34205
ph: (941) 932-9425 / (941) 932-9549
e-mail: william.ackles@cityofbradenton.com



PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from city officials regarding city business are public records available to the public and media upon request. Your e-mail communications may very likely be subject to public disclosure.

2/4/2010

"ARTICLE 7"

CHAPTER 2010-211

Committee Substitute for
Committee Substitute for Senate Bill No. 2272 and
Committee Substitute for Senate Bill No. 2722

An act relating to controlled substances; amending s. 456.037, F.S.; providing that pain-management clinics that are required to be registered with the Department of Health are business establishments; amending s. 456.057, F.S.; providing that the Department of Health is not required to attempt to obtain authorization from a patient for the release of the patient's medical records under certain circumstances; authorizing the department to obtain patient records without authorization or subpoena if the department has probable cause to believe that certain violations have occurred or are occurring; repealing s. 458.309(4), (5), and (6), F.S., relating to pain-management clinics; creating s. 458.3265, F.S.; requiring all privately owned pain-management clinics, or offices that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications or by employing a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, to register with the Department of Health; providing exceptions; requiring each location of a pain-management clinic to register separately; requiring a clinic to designate a physician who is responsible for complying with requirements related to registration and operation of the clinic; requiring the department to deny registration or revoke the registration of a pain-management clinic for certain conditions; authorizing the department to revoke a clinic's certificate of registration and prohibit physicians associated with the clinic from practicing at the clinic's location; requiring a pain-management clinic to cease operating if its registration certificate is revoked or suspended; requiring certain named persons to remove all signs and symbols identifying the premises as a pain-management clinic; requiring a pain-management clinic that has had its registration revoked or suspended to advise the department of the disposition of the medicinal drugs located on the premises; providing that medicinal drugs that are purchased or held by a pain-management clinic that is not registered may be deemed adulterated; prohibiting any person acting as an individual or as part of a group from applying for a certificate to operate a pain-management clinic for a certain period after the date the person's registration certificate is revoked; providing that a change of ownership of a registered pain-management clinic requires submission of a new registration application; providing the responsibilities of a physician who provides professional services at a pain-management clinic; requiring the department to inspect pain-management clinics and its patient records; providing an exception to inspection by the department; requiring a pain-management clinic to document corrective action; requiring the department and the Board of Medicine to adopt rules; authorizing the department to impose fines, deny a clinic's registration, or revoke a clinic's registration; amending s. 458.327, F.S.; providing that the

commission of certain specified acts involving a nonregistered pain-management clinic constitutes a felony of the third degree or a misdemeanor of the first degree; amending s. 458.331, F.S.; providing additional acts that constitute grounds for disciplinary actions against health professional licensees; repealing s. 459.005(3), (4), and (5), F.S., relating to pain-management clinics; creating s. 459.0137, F.S.; requiring all privately owned pain-management clinics, or offices that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications or by employing an osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, to register with the department; providing exceptions; requiring each location of a pain-management clinic to register separately; requiring a clinic to designate an osteopathic physician who is responsible for complying with requirements related to registration and operation of the clinic; requiring the department to deny registration or revoke the registration of a pain-management clinic for certain conditions; authorizing the department to revoke a clinic's certificate of registration and prohibit osteopathic physicians associated with the clinic from practicing at the clinic's location; requiring a pain-management clinic to cease operating if its registration certificate is revoked or suspended; requiring certain named persons to remove all signs and symbols identifying the premises as a pain-management clinic; requiring a pain-management clinic that has had its registration revoked or suspended to advise the department of the disposition of the medicinal drugs located on the premises; providing that medicinal drugs that are purchased or held by a pain-management clinic that is not registered may be deemed adulterated; prohibiting any person acting as an individual or as part of a group from applying for a certificate to operate a pain-management clinic for a certain period after the date the person's registration certificate is revoked; providing that a change of ownership of a registered pain-management clinic requires submission of a new registration application; providing the responsibilities of an osteopathic physician who provides professional services at a pain-management clinic; requiring the department to inspect pain-management clinics and its patient records; providing an exception to inspection by the department; requiring a pain-management clinic to document corrective action; requiring the department and the Board of Osteopathic Medicine to adopt rules; authorizing the department to impose fines, deny a clinic's registration, or revoke a clinic's registration; amending s. 459.013, F.S.; providing that the commission of certain specified acts involving a nonregistered pain-management clinic constitutes a felony of the third degree or a misdemeanor of the first degree; amending s. 459.015, F.S.; providing additional acts that constitute grounds for disciplinary actions against health professional licensees; amending s. 465.0276, F.S.; prohibiting registered dispensing practitioners from dispensing more than a specified amount of certain controlled substances; providing penalties; providing exceptions; amending s. 893.055, F.S.; defining the term "program manager"; requiring that the program manager work with certain licensure boards and stakeholders to develop rules; authorizing the

program manager to provide relevant information to law enforcement agencies under certain circumstances; amending s. 893.0551, F.S.; providing for disclosure of confidential and exempt information to applicable law enforcement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 456.037, Florida Statutes, is amended to read:

456.037 Business establishments; requirements for active status licenses; delinquency; discipline; applicability.—

(5) This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments include, but are not limited to, dental laboratories, electrology facilities, massage establishments, and pharmacies, and pain-management clinics required to be registered under s. 458.3265 or s. 459.0137.

Section 2. Paragraph (a) of subsection (9) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished.—

(9)(a)1. The department may obtain patient records pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has excessively or inappropriately prescribed any controlled substance specified in chapter 893 in violation of this chapter or any professional practice act or that a health care practitioner has practiced his or her profession below that level of care, skill, and treatment required as defined by this chapter or any professional practice act and also find that appropriate, reasonable attempts were made to obtain a patient release. Notwithstanding the foregoing, the department need not attempt to obtain a patient release when investigating an offense involving the inappropriate prescribing, overprescribing, or diversion of controlled substances and the offense involves a pain-management clinic. The department may obtain patient records without patient authorization or subpoena from any pain-management clinic required to be licensed if the department has probable cause to believe that a violation of any provision of s. 458.3265 or s. 459.0137 is occurring or has occurred and reasonably believes that obtaining such authorization is not feasible due to the volume of the dispensing and prescribing activity involving controlled substances and that obtaining patient authorization or the issuance of a subpoena would jeopardize the investigation.

2. The department may obtain patient records and insurance information pursuant to a subpoena without written authorization from the patient if the department and the probable cause panel of the appropriate board, if

any, find reasonable cause to believe that a health care practitioner has provided inadequate medical care based on termination of insurance and also find that appropriate, reasonable attempts were made to obtain a patient release.

3. The department may obtain patient records, billing records, insurance information, provider contracts, and all attachments thereto pursuant to a subpoena without written authorization from the patient if the department and probable cause panel of the appropriate board, if any, find reasonable cause to believe that a health care practitioner has submitted a claim, statement, or bill using a billing code that would result in payment greater in amount than would be paid using a billing code that accurately describes the services performed, requested payment for services that were not performed by that health care practitioner, used information derived from a written report of an automobile accident generated pursuant to chapter 316 to solicit or obtain patients personally or through an agent regardless of whether the information is derived directly from the report or a summary of that report or from another person, solicited patients fraudulently, received a kickback as defined in s. 456.054, violated the patient brokering provisions of s. 817.505, or presented or caused to be presented a false or fraudulent insurance claim within the meaning of s. 817.234(1)(a), and also find that, within the meaning of s. 817.234(1)(a), patient authorization cannot be obtained because the patient cannot be located or is deceased, incapacitated, or suspected of being a participant in the fraud or scheme, and if the subpoena is issued for specific and relevant records.

4. Notwithstanding subparagraphs 1.-3., when the department investigates a professional liability claim or undertakes action pursuant to s. 456.049 or s. 627.912, the department may obtain patient records pursuant to a subpoena without written authorization from the patient if the patient refuses to cooperate or if the department attempts to obtain a patient release and the failure to obtain the patient records would be detrimental to the investigation.

Section 3. Subsections (4), (5), and (6) of section 458.309, Florida Statutes, are repealed.

Section 4. Section 458.3265, Florida Statutes, is created to read:

458.3265 Pain-management clinics.—

(1) REGISTRATION.—

(a) All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which advertise in any medium for any type of pain-management services, or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department unless:

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

2. The majority of the physicians who provide services in the clinic primarily provide 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 million;

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

5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or

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

(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 a 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 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 this chapter or chapter 459 and shall practice at the clinic location for which the physician has assumed responsibility. Failing to have a licensed designated 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 this chapter or chapter 459 or a group of physicians, each of whom is licensed under this chapter or chapter 459; 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 plead 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 (c), 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, apply 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 physician who provides professional services in a pain-management clinic that is required to be registered in subsection (1).

(a) A physician may not practice medicine in a pain-management clinic, as described in subsection (4), if:

1. The pain-management clinic is not registered with the department as required by this section; or

2. Effective July 1, 2012, the physician has not successfully completed a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education or a pain medicine residency that is accredited by the Accreditation Council for Graduate Medical Education or, prior to July 1, 2012, does not comply with rules adopted by the board.

Any physician who qualifies to practice medicine in a pain-management clinic pursuant to rules adopted by the Board of 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. A 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, including a controlled substance, on the premises of a registered pain-management clinic unless he or she is a physician licensed under this chapter or chapter 459.

(c) A physician must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. If the physician prescribes or dispenses more than a 72-hour dose of controlled substances for the treatment of chronic nonmalignant pain, the physician must document in the patient's record the reason for prescribing or dispensing that quantity.

(d) A 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 physician shall comply with the requirements for counterfeit-resistant prescription blanks in s. 893.065 and the rules adopted pursuant to that section. The 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 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).

(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 Medicine adopted pursuant to

subsection (4) unless the clinic is accredited by a nationally recognized accrediting agency approved by the Board of 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 department shall adopt a rule defining what constitutes practice by a designated physician at the clinic location for which the physician has assumed responsibility, as set forth in subsection (1). When adopting the rule, the department shall consider the number of clinic employees, the location of the pain-management clinic, the clinic's hours of operation, and the amount of controlled substances being prescribed, dispensed, or administered at the pain-management clinic.

(c) The Board of Medicine shall adopt a rule establishing the maximum number of prescriptions for Schedule II or Schedule III controlled substances or the controlled substance Alprazolam which may be written at any one registered pain-management clinic during any 24-hour period.

(d) The Board of Medicine shall adopt rules setting forth standards of practice for physicians practicing in privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications. Such rules shall address, but need not be limited to:

1. Facility operations;
2. Physical operations;
3. Infection control requirements;
4. Health and safety requirements;
5. Quality assurance requirements;
6. Patient records;
7. Training requirements for all facility health care practitioners who are not regulated by another board;
8. Inspections; and

9. Data collection and reporting requirements.

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

(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 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 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 physician knowingly and intentionally misrepresents actions taken to correct a violation.

(d) An owner or designated 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.

(c) 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.

Section 5. Section 458.327, Florida Statutes, is amended to read:

458.327 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of medicine or an attempt to practice medicine without a license to practice in Florida.

(b) The use or attempted use of a license which is suspended or revoked to practice medicine.

(c) Attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

(e) Knowingly operating, owning, or managing a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 458.3265(1).

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly concealing information relating to violations of this chapter.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) Referring any patient, for health care goods or services, to a partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more unless, prior to such referral, the physician notifies the patient of his or her financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. This section does not apply to the following types of equity interest:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over-the-counter market;

2. A physician's own practice, whether he or she is a sole practitioner or part of a group, when the health care good or service is prescribed or provided

solely for the physician's own patients and is provided or performed by the physician or under the physician's supervision; or

3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

(d) Leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid, active license.

(e) Practicing medicine or attempting to practice medicine with an inactive or delinquent license.

(f) Knowingly prescribing or dispensing, or causing to be prescribed or dispensed, controlled substances in a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 458.3265(1).

Section 6. Paragraphs (oo), (pp), and (qq) are added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(oo) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of 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 Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003(14) or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 458.3265(2).

(pp) Failing to timely notify the department of the theft of prescription blanks from a pain-management clinic or a breach of other methods for prescribing within 24 hours as required by s. 458.3265(2).

(qq) Promoting or advertising through any communication media the use, sale, or dispensing of any controlled substance appearing on any schedule in chapter 893.

Section 7. Subsections (3), (4), and (5) of section 459.005, Florida Statutes, are repealed.

Section 8. Section 459.0137, Florida Statutes, is created to read:

459.0137 Pain-management clinics.—

(1) REGISTRATION.—

(a) All privately owned pain-management clinics, facilities, or offices, hereinafter referred to as "clinics," which advertise in any medium for any type of pain-management services, or employ an osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department unless:

1. That clinic is licensed as a facility pursuant to chapter 395;
2. The majority of the physicians who provide services in the clinic primarily provide 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 million;

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

5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or

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

(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 plead 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:

1. The pain-management clinic is not registered with the department as required by this section; or

2. Effective July 1, 2012, the physician has not successfully completed a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or a pain medicine residency that is accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or, prior to July 1, 2012, does not comply with rules adopted by the board.

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, including a controlled substance, 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 must perform a physical examination of a patient on the same day that he or she dispenses or prescribes a controlled substance to a patient at a pain-management clinic. If the osteopathic physician prescribes or dispenses 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 or dispensing 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).

(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 department shall adopt a rule defining what constitutes practice by a designated osteopathic physician at the clinic location for which the physician has assumed responsibility, as set forth in subsection (1). When adopting the rule, the department shall consider the number of clinic employees, the location of the pain-management clinic, the clinic's hours of operation, and the amount of controlled substances being prescribed, dispensed, or administered at the pain-management clinic.

(c) The Board of Osteopathic Medicine shall adopt a rule establishing the maximum number of prescriptions for Schedule II or Schedule III controlled substances or the controlled substance Alprazolam which may be written at any one registered pain-management clinic during any 24-hour period.

(d) The Board of Osteopathic Medicine shall adopt rules setting forth standards of practice for osteopathic physicians practicing in privately owned pain-management clinics that primarily engage in the treatment of pain by prescribing or dispensing controlled substance medications. Such rules shall address, but need not be limited to:

1. Facility operations;
2. Physical operations;
3. Infection control requirements;
4. Health and safety requirements;
5. Quality assurance requirements;
6. Patient records;
7. Training requirements for all facility health care practitioners who are not regulated by another board;
8. Inspections; and

9. Data collection and reporting requirements.

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

(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.

Section 9. Subsections (1) and (2) of section 459.013, Florida Statutes, are amended to read:

459.013 Penalty for violations.—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of osteopathic medicine, or an attempt to practice osteopathic medicine, without an active license or certificate issued pursuant to this chapter.

(b) The practice of osteopathic medicine by a person holding a limited license, osteopathic faculty certificate, or other certificate issued under this chapter beyond the scope of practice authorized for such licensee or certificateholder.

(c) Attempting to obtain or obtaining a license to practice osteopathic medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as an osteopathic medical practitioner or osteopathic medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

(e) Knowingly operating, owning, or managing a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 459.0137(1).

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly concealing information relating to violations of this chapter.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) The practice of medicine as a resident or intern without holding a valid current registration pursuant to s. 459.021.

(d) Knowingly prescribing or dispensing, or causing to be prescribed or dispensed, controlled substances in a nonregistered pain-management clinic that is required to be registered with the Department of Health pursuant to s. 459.0137(1).

Section 10. Paragraphs (qq), (rr), and (ss) are added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(qq) Applicable to a licensee who serves as the designated physician of a pain-management clinic as defined in s. 458.3265 or s. 459.0137:

1. Registering a pain-management clinic through misrepresentation or fraud;

2. Procuring, or attempting to procure, the registration of a pain-management clinic for any other person by making or causing to be made, any false representation;

3. Failing to comply with any requirement of 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 Drug Abuse Prevention and Control Act; or chapter 893, the Florida Comprehensive Drug Abuse Prevention and Control Act;

4. Being convicted or found guilty of, regardless of adjudication to, a felony or any other crime involving moral turpitude, fraud, dishonesty, or deceit in any jurisdiction of the courts of this state, of any other state, or of the United States;

5. Being convicted of, or disciplined by a regulatory agency of the Federal Government or a regulatory agency of another state for any offense that would constitute a violation of this chapter;

6. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to the practice of, or the ability to practice, a licensed health care profession;

7. Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction of the courts of this state, of any other state, or of the United States which relates to health care fraud;

8. Dispensing any medicinal drug based upon a communication that purports to be a prescription as defined in s. 465.003(14) or s. 893.02 if the dispensing practitioner knows or has reason to believe that the purported prescription is not based upon a valid practitioner-patient relationship; or

9. Failing to timely notify the board of the date of his or her termination from a pain-management clinic as required by s. 459.0137(2).

(rr) Failing to timely notify the department of the theft of prescription blanks from a pain-management clinic or a breach of other methods for prescribing within 24 hours as required by s. 459.0137(2).

(ss) Promoting or advertising through any communication media the use, sale, or dispensing of any controlled substance appearing on any schedule in chapter 893.

Section 11. Subsection (1) of section 465.0276, Florida Statutes, is amended to read:

465.0276 Dispensing practitioner.—

(1)(a) A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

(b) A practitioner registered under this section may not dispense more than a 72-hour supply of a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03 for any patient who pays for the medication by cash, check, or credit card in a clinic registered under s. 458.3265 or s. 459.0137. A practitioner who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply to:

1. A practitioner who dispenses medication to a workers' compensation patient pursuant to chapter 440.

2. A practitioner who dispenses medication to an insured patient who pays by cash, check, or credit card to cover any applicable copayment or deductible.

3. The dispensing of complimentary packages of medicinal drugs to the practitioner's own patients in the regular course of her or his practice without the payment of a fee or remuneration of any kind, whether direct or indirect, as provided in subsection (5).

Section 12. Paragraph (j) is added to subsection (1), paragraph (d) is added to subsection (2), and paragraph (f) is added to subsection (7) of section 893.055, Florida Statutes, to read:

893.055 Prescription drug monitoring program.—

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

(j) "Program manager" means an employee of or a person contracted by the Department of Health who is designated to ensure the integrity of the prescription drug monitoring program in accordance with the requirements established in paragraphs (2)(a) and (b).

(2)

(d) The program manager shall work with professional health care licensure boards and the stakeholders listed in paragraph (b) to develop rules appropriate for identifying indicators of controlled substance abuse.

(7)

(f) The program manager, upon determining a pattern consistent with the rules established under paragraph (2)(c) and having cause to believe a violation of s. 893.13(7)(a)8., (8)(a), or (8)(b) has occurred, may provide relevant information to the applicable law enforcement agency.

Section 13. Subsections (4), (5), and (6) of section 893.0551, Florida Statutes, are renumbered as subsections (5), (6), and (7), respectively, and subsection (4) is added to that section, to read:

893.0551 Public records exemption for the prescription drug monitoring program.—

(4) The department shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. 893.055(7)(b)2. The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. 119.011 as part of an active investigation that is specific to a violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s. 893.13(8)(b).

Section 14. This act shall take effect October 1, 2010.

Approved by the Governor June 4, 2010.

Filed in Office Secretary of State June 4, 2010.

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 5
Meeting Date: June 23, 2010

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Malabar Land Inventory – Resolution 55-2010

BACKGROUND/HISTORY:

The Florida Legislature passed F.S. 166.0451 in the 2006 Session requiring every municipality to prepare an inventory of real property owned in fee simple title and determined by the municipality to be suitable for affordable housing. This was originally due to the State by July 1, 2007, and updated every three (3) years thereafter. After review by Town Staff and the Malabar P&Z Board, Malabar Council adopted Resolution 08-2008 in March 2008 certifying the inventory of Town owned property and attesting that none of it was suitable for affordable housing.

Staff is asking P&Z to review the list again on June 23, 2010 and determine if the lands are still either actively being used for Municipal purposes or are held with restrictions for recreational or conservation uses and it does not appear to include any land suitable for affordable housing.

The character and quality of the Town as described in the Town Charter is Rural Residential and the people of Malabar, having complete faith in representative government with the ultimate power to govern remaining with themselves intended to preserve the rural character by stipulating that single family residences should maintain one and one-half acres per home or as set forth in the Comp Plan.

ATTACHMENTS:

- Resolution 55-2010
- Portion of P&Z minutes from 1/23/2008 and Town Council 3/3/2008
- F.S. 166.0451 Stating requirement for inventory and resolution
- Comp Plan regarding Affordable Housing
- Land Inventory

ACTION OPTIONS:

Recommend Council approve Resolution 55-2010.

RESOLUTION NO. 55-2010

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PROVIDING FOR ADOPTION OF INVENTORY OR REAL PROPERTY OWNED THAT IS APPROPRIATE FOR AFFORDABLE HOUSING; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statute 166.0451 requires all municipalities to create an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title and that is appropriate for use as affordable housing; and

WHEREAS, this list was required by July 1, 2007 and must be redone every three years thereafter; and

WHEREAS, the list must include the address and the legal description of each such property; and

WHEREAS, the Town Council adopted Resolution 08-2008 in March of 2008 as required and forwarded it to the State; and

WHEREAS, the Town Council must review the inventory list at a public hearing and adopt the inventory list per F.S. 166.0451.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

Section 1. The Town Council of Malabar, Brevard County, Florida, hereby ratifies, confirms, and certifies that the inventory list attached to this resolution as Exhibit "A" is complete and accurate.

Section 2. The Town Council of Malabar attests that none of the property on the inventory list included as Exhibit "A" is appropriate for affordable housing.

Section 3. The Town Council directs the Town Clerk to forward a certified copy of this resolution to Florida Board of Trustees of the Internal Improvement Trust Fund.

Section 4. That a certified copy of this Resolution shall be delivered to the ECFRPC, Space Coast MPO, DCA, SJRWMD and the City of Palm Bay..

Section 5. This Resolution shall take effect immediately upon its adoption.

This Resolution was moved for adoption by Council Member _____. This motion

was seconded by Council Member _____ and, upon being put to vote, the vote was as follows:

Council Member Nancy Borton	_____
Council Member Brian Vail	_____
Council Member Steven (Steve) Rivet	_____
Council Member Jeffrey (Jeff) McKnight	_____
Council Member Marisa Acquaviva	_____

This Resolution was then declared to be duly passed and adopted this 21st day of June, 2010.

By: TOWN OF MALABAR

Mayor: Thomas M. Eschenberg
Town of Malabar

Approved for Legal Sufficiency:

Karl Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

(seal)

Exhibit "A"

Jim Ford, C.F.A.
Property Appraiser
Brevard County, FL



**Property
 Research**

[Home] [Meet JimFord] [Appraiser's Job] [FAQ] [General Info] [Save Our Homes] [Exemptions] [Tangible Property] [Contact Us] [Locations] [Forms] [Appeals] [Property Research] [Map Search] [Maps & Data] [Unusable Property] [Tax Authorities] [Tax Facts] [Economic Indicators] [What's New] [Links] [Press Releases] [Tax Estimator]

Map All Properties

Real Estate Records by Owner Name

	Account	Owner Name	Property Address	Parcel Id
Map	2846285	MALABAR, TOWN OF		28-37-36-00-00251.0-0000.00
Map	2846300	MALABAR, TOWN OF	1840 MALABAR RD Unit FIREST	28-37-36-00-00510.0-0000.00
Map	2846100	MALABAR, TOWN OF		28-37-35-00-00001.0-0000.00
Map	2846101	MALABAR, TOWN OF		28-37-35-00-00003.0-0000.00
Map	2846102	MALABAR, TOWN OF		28-37-35-00-00004.0-0000.00
Map	2846134	MALABAR, TOWN OF		28-37-35-00-00510.0-0000.00
Map	2859776	MALABAR, TOWN OF		28-38-31-00-00753.1-0000.00
Map	2851024	MALABAR, TOWN OF		28-38-31-26-00005.0-0001.00
Map	2851025	MALABAR, TOWN OF		28-38-31-26-00005.0-0019.00
Map	2851026	MALABAR, TOWN OF		28-38-31-26-00005.0-0020.00
Map	2851027	MALABAR, TOWN OF		28-38-31-26-00005.0-0022.00
Map	2851028	MALABAR, TOWN OF		28-38-31-26-00005.0-0023.00
Map	2863604	MALABAR, TOWN OF & C/O KARL W BOHNE JR PA ATTY		28-38-31-50-0000A.0-0008.07
Map	2851080	MALABAR, TOWN OF		28-38-31-54-0000B.0-0009.00
Map	2851083	MALABAR, TOWN OF	2725 MALABAR RD	28-38-31-54-0000B.0-0014.00
				28-38-31-54-

Map	2851084	MALABAR, TOWN OF		0000B.0-0026.00
Map	2851085	MALABAR, TOWN OF	1435 CENTRE ST	28-38-31-54-0000B.0-0030.00
Map	2863605	MALABAR, TOWN OF & C/O KARL W BOHNE JR PA ATTY		28-38-31-55-00006.0-0001.01
Map	2863606	MALABAR, TOWN OF & C/O KARL W BOHNE JR PA ATTY		28-38-31-55-00007.0-0001.01
Map	2863607	MALABAR, TOWN OF & C/O KARL W BOHNE JR PA ATTY		28-38-31-55-00007.0-0002.01
Map	2922714	MALABAR, TOWN OF		29-37-03-00-00005.0-0000.00
Map	2922165	MALABAR, TOWN OF	1845 MALABAR RD Unit PARK	29-37-01-00-00251.0-0000.00
Map	2960800	MALABAR, TOWN OF		29-37-03-03-00000.0-0001.01
Map	2922472	MALABAR, TOWN OF	1585 MALABAR RD Unit PARK	29-37-02-00-00072.0-0000.00
Map	2922534	MALABAR, TOWN OF		29-37-02-00-00505.0-0000.00

All Properties where Owner Name like malabar, town of
 Select next to list another 25 records.

[New Search](#) | [Next](#) | [Help](#)

[Home] [Meet JimFord] [Appraiser's Job] [FAQ] [General Info] [Save Our Homes] [Exemptions] [Tangible Property] [Contact Us] [Locations] [Forms] [Appeals] [Property Research] [Map Search] [Maps & Data] [Unusable Property] [Tax Authorities] [Tax Facts] [Economic Indicators] [What's New] [Links] [Press Releases] [Tax Estimator]

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3. Malabar Owned Land for Affordable Housing. RESO No. 08-2008.

Mayor explained that this item required a public hearing per the Florida Statute.

Without objection Mayor read Resolution 08-2008 by title only. RESOLUTION 08-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA PROVIDING FOR ADOPTION OF INVENTORY OF REAL PROPERTY OWNED THAT IS APPROPRIATE FOR AFFORDABLE HOUSING; PROVIDING FOR AN EFFECTIVE DATE.

Exhibit: Agenda Report No 3

Recommendation: Action on Reso. No. 08-2008

MOTION: McClelland / Borton to approve Resolution 08- 2008. Discussion: none. Opened Public Hearing. None. Closed Public Hearing.

Vote: The roll was called: Council members: Borton, Aye; Vail, Aye; McClelland, Aye; McKnight, Aye; Dezman, Aye. Motion carried 5 to 0.

Portion of P&Z minutes from 1-23-08 meeting:

4. Resolution 09-2008 Malabar Owned Land Inventory

Motion : Reilly/ Cameron to approve the report. Cameron said this is political move to allow the state to add low rent housing to small communities. Ryan agreed with report. The land is either set aside or being used by the town. There is no debate. Ryan said if you are looking to preserve rural lifestyle then you can't afford to do it here. Wilbur said that we are being forced to add areas for affordable housing. Board discussed low income housing and affordable housing. Reilly amended motion to state resolution instead of report. **Vote: All Ayes.**

Select Year:

The 2009 Florida Statutes

Title XII
MUNICIPALITIES

Chapter 166
MUNICIPALITIES

[View Entire Chapter](#)

166.0451 Disposition of municipal property for affordable housing.--

(1) By July 1, 2007, and every 3 years thereafter, each municipality shall prepare an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title that is appropriate for use as affordable housing. The inventory list must include the address and legal description of each such property and specify whether the property is vacant or improved. The governing body of the municipality must review the inventory list at a public hearing and may revise it at the conclusion of the public hearing. Following the public hearing, the governing body of the municipality shall adopt a resolution that includes an inventory list of such property.

(2) The properties identified as appropriate for use as affordable housing on the inventory list adopted by the municipality may be offered for sale and the proceeds may be used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing, or may be sold with a restriction that requires the development of the property as permanent affordable housing, or may be donated to a nonprofit housing organization for the construction of permanent affordable housing. Alternatively, the municipality may otherwise make the property available for use for the production and preservation of permanent affordable housing. For purposes of this section, the term "affordable" has the same meaning as in s. [420.0004\(3\)](#).

History.--s. 4, ch. 2006-69.

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→ **Affordable Housing Demand:** Table 3-14 presents the very-low, low, and moderate income housing needs estimates and projections through 2030.

TABLE 3-14: PROJECTED HOUSING AFFORDABILITY BY INCOME AND TENURE, MALABAR, 2005-2030

A. Owner-Occupied Households				
	Household Income as a Percentage of Area Median Income (AMI)			
	0-50% AMI	50.01-80% AMI	80.01-120% AMI	120.01+% AMI
Year	Very-Low	Low	Moderate	Above Moderate
2005	156	153	243	503
2010	177	175	273	559
2015	206	201	304	603
2020	236	228	335	647
2025	257	250	359	680
2030	279	272	386	714
B. Renter-Occupied Households				
Year	Very-Low	Low	Moderate	Above Moderate
2005	11	11	18	37
2010	13	13	20	41
2015	15	15	22	45
2020	17	17	25	48
2025	19	18	26	50
2030	21	20	28	53

Source: Shimberg Center – Florida Housing Data Clearinghouse. Prepared by: Calvin, Giordano & Associates, Inc.

The analysis suggests that 261 of the additional 639 households projected through 2030 will have an income less than 80 percent of the area median income. Of these low and very-low income households, 242 (93 percent) will be owner-occupied, while 19 (7 percent) will be renter-occupied. Overall, these projections point out the stability of income and population in the Town.

→ **CONCLUSION**

→ No significant deficit of affordable housing exists nor is redevelopment projected to occur in the Town's short (5-year) or long (10-year) term planning periods. Malabar has met its housing needs with the existing development and will continue to meet its housing needs as its population steadily increases.

Malabar's continued efforts to maintain the infrastructure, including drainage, landscape, transportation and roads will prolong the life of its older neighborhoods. In addition, increased and proactive code enforcement activity is required to sustain the integrity of the Town.

The following goals, objectives and policies provide residents with housing choice and assurance of a quality, highly maintained area, all of which demonstrates the advances Malabar is taking to address the housing needs of the different demographics and income levels of its residents.

HOUSING ELEMENT GOAL, OBJECTIVES, AND POLICIES

§3-1 Housing goals, objectives, and implementing policies. This section stipulates goals, objectives, and implementing policies for the Housing Element pursuant to §163.3177(6)(f), F.S., and §9J-5.010(3)(a-c), F.A.C.

Goal 3-1

Housing. Allocate land area for accommodating a supply of housing responsive to the diverse housing needs of the existing and projected future Town population and assist the private sector in providing affordable quality housing in neighborhoods protected from incompatible uses and served by adequate public facilities.

3-1.1 Objective:

Promote affordable quality housing. The Town of Malabar shall provide for adequate and afford housing for existing and future residents, households with special needs, rural and farmworker households, and very low, low, and moderate income households consistent with the needs identified in Tables 3-12, 3-13, and 3-14 through the short term (5 year) and long term (10 year) planning timeframes.

3-1.1.1 Policy:

Technical assistance, information and referral services. Provide technical assistance, information and referral services to the private sector in order to maintain a housing production capacity sufficient to meet the projected housing market demand.

3-1.1.2 Policy:

Developing public/private partnerships. Coordinate with the Florida Housing Coalition and other appropriate organizations to review alternatives for affordable and workforce housing.

3-1.1.3 Policy:

Affordable housing for low and moderate income households. The Town shall promote access to a broad range of housing opportunities with a full complement of urban services through cooperation and coordination with the private sector. The Town acknowledges a regional need for affordable low and moderate income housing and shall coordinate with ECFRPC, Brevard County, and the FL-DCA in promoting fair housing. Fair housing issues shall be coordinated through the Brevard County Housing Authority.

3-1.2 Objective:

Achieve housing stock free of substandard units. The Town shall strive to eliminate substandard housing conditions and blighting influences and improve structural and aesthetic housing conditions as defined by the Town Code of Ordinances and the Florida Building Code.

Click Action: Parcel Info Distance 0
Decrease Zoom Bar | Aerial View Range Increase

View
 Map Aerial
Change
Locate
Parcel ID Lc
Zoom to
Brevard County
Printable Version
Map Previ
Check below the
 GolfCourses
 Libraries
 MajorRoads
 Sections
 Water
Update
Help Leg

Zoom To	Account	Owner Name	Property Address	ParcelID
2	2846285	MALABAR, TOWN OF		28-37-36-00-00251.0-0000.0
3	2846300	MALABAR, TOWN OF	1840 MALABAR RD FIREST	28-37-36-00-00510.0-0000.0
4	2846100	MALABAR, TOWN OF		28-37-35-00-00001.0-0000.0
5	2846101	MALABAR, TOWN OF		28-37-35-00-00003.0-0000.0
8	2846102	MALABAR, TOWN OF		28-37-35-00-00004.0-0000.0
9	2846134	MALABAR, TOWN OF		28-37-35-00-00510.0-0000.0
10	2859776	MALABAR, TOWN OF		28-38-31-00-00753.1-0000.0
11	2851024	MALABAR, TOWN OF		28-38-31-26-00005.0-0001.0
13	2851025	MALABAR, TOWN OF		28-38-31-26-00005.0-0019.0
14	2851026	MALABAR, TOWN OF		28-38-31-26-00005.0-0020.0
15	2851027	MALABAR, TOWN OF		28-38-31-26-00005.0-0022.0
16	2851028	MALABAR, TOWN OF	2540 JOHNSTON AVE PARK	28-38-31-26-00005.0-0023.0
17	2863604	MALABAR, TOWN OF		28-38-31-50-0000A.0-0008.07
18	2851080	MALABAR, TOWN OF		28-38-31-54-0000B.0-0009.0
19	2851083	MALABAR, TOWN OF	2725 MALABAR RD	28-38-31-54-0000B.0-0014.0
20	2851084	MALABAR, TOWN OF		28-38-31-54-0000B.0-0026.0
21	2851085	MALABAR, TOWN OF	1435 CENTRE ST	28-38-31-54-0000B.0-0030.0
22	2863605	MALABAR, TOWN OF		28-38-31-55-00006.0-0001.01
23	2863606	MALABAR, TOWN OF		28-38-31-55-00007.0-0001.01
24	2863607	MALABAR, TOWN OF		28-38-31-55-00007.0-0002.01
25	2922714	MALABAR, TOWN OF		29-37-03-00-00005.0-0000.0
26	2922472	MALABAR, TOWN OF	1585 MALABAR RD PARK	29-37-02-00-00072.0-0000.0
27	2922534	MALABAR, TOWN OF		29-37-02-00-00505.0-0000.0
28	2960800	MALABAR, TOWN OF		29-37-03-03-00000.0-0001.01
25	2964988	MALABAR, TOWN OF		29-37-01-00-00586.1-0000.0
29	2922165	MALABAR, TOWN OF	1845 MALABAR RD PARK	29-37-01-00-00251.0-0000.0
30	2964956	MALABAR, TOWN OF		29-37-10-00-00078.1-0000.0
28	2964983	MALABAR, TOWN OF		29-37-12-00-00066.1-0000.0
29	2964981	MALABAR, TOWN OF		29-37-12-00-00254.1-0000.0
30	2964982	MALABAR, TOWN OF		29-37-12-00-00254.2-0000.0
31	2953328	MALABAR, TOWN OF	2345 MARIE ST	29-38-06-00-00502.0-0000.0
32	2964413	MALABAR, TOWN OF		29-38-06-UU-000GW.1-0000.0
33	2964414	MALABAR, TOWN OF		29-38-06-UU-000GW.2-0000.0

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 6
Meeting Date: June 23, 2010

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Nancy and Stuart Borton – SSA

BACKGROUND/HISTORY:

The Borton's have asked the Town Clerk if they could speak to P&Z about a land use and zoning change they would like to apply for. Since the matter involves land use, the Clerk asked the Attorney for guidance. They are allowed to introduce the proposed request to the Board before a formal application is submitted. The land use is currently commercial general. They would be asking for a less intensive land use and zoning for residential.

ATTACHMENTS:

- Email between Clerk and Attorney
- Quasi-judicial Procedures

ACTION OPTIONS:

This requires no action from the Board at this time. This will be a quasi-judicial issue when formal application is made.

Town Clerk / Treasurer

From: stuart@yellowdogcafe.com
Sent: Thursday, June 17, 2010 8:56 AM
To: Town Clerk / Treasurer
Subject: Re: Malabar legal opinion

Yes please

← P&Z 6/23/10

Sent on the Sprint® Now Network from my BlackBerry®

From: "Town Clerk / Treasurer" <townclerk@townofmalabar.org>
Date: Thu, 17 Jun 2010 08:52:09 -0400
To: Nancy Borton<nancy@yellowdogcafe.com>; <stuart@yellowdogcafe.com>
Subject: FW: Malabar legal opinion

Nancy and Stuart,
Good Morning,
It is ok to bring your request to P&Z so you can explain why you are wanting to make the request. Shall I put you on the agenda for June 23, 2010?

Debby K. Franklin
Town Clerk/Treasurer
Town of Malabar
2725 Malabar Road
Malabar, FL 32950
townclerk@townofmalabar.org
321-727-7764 x12
321-722-2234 Fax
Town Website: www.townofmalabar.org

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Karl Bohne [mailto:kbohne@fla-lawyers.com]
Sent: Thursday, June 17, 2010 8:32 AM
To: Town Clerk / Treasurer
Subject: RE: Malabar legal opinion

That is ok as long as everyone understands that this first "meeting" is not to be construed as a P&Z approval. It is merely to get input from the P&Z on the concept and it will have to go to them once a formal application is submitted.

From: Town Clerk / Treasurer [mailto:townclerk@townofmalabar.org]
Sent: Wednesday, June 16, 2010 5:43 PM
To: Karl Bohne
Subject: Malabar legal opinion

Karl, regarding quasi judicial proceedings. Bortons want to request a land use and zoning change to land they own along the river. They want to come to P&Z and explain why they want this. Then they will make formal application. That is the way the P&Z likes it. Discuss it first and then have for action. Can we do that?

Debby K. Franklin

Town Clerk/Treasurer

Town of Malabar

2725 Malabar Road

Malabar, FL 32950

townclerk@townofmalabar.org

321-727-7764 x12

321-722-2234 Fax

Town Website: www.townofmalabar.org

Please Note: Florida has a broad public records law. As a result, any written communication created or received by Town of Malabar officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.437 / Virus Database: 271.1.1/2941 - Release Date: 06/16/10 06:35:00

RESOLUTION 29-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING QUASI-JUDICIAL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council recognized the need for established procedures to facilitate orderly and respectable Board and Town Council meetings when quasi-judicial items are on the agenda; and

WHEREAS, the Town Council recognizes that this Resolution shall act as a guide and provide a procedure for Town Boards and Council to follow; and

WHEREAS, the Town Council recognizes that the procedures may be amended from time to time by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. Procedures

A copy of the Procedures are attached as Exhibit "A"

SECTION 2. Conflict.

All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. Effective Date.

This Resolution shall take effect immediately upon its adoption.

This Resolution was moved for adoption by Council Member McClelland. This motion was seconded by Council Member Borton and, upon being put to vote, the vote was as follows:

Council Member Nancy Borton

Aye

Council Member Brian Vail

Aye

Council Member Charles (Chuck) McClelland

Aye

Council Member Jeffrey (Jeff) McKnight

Aye

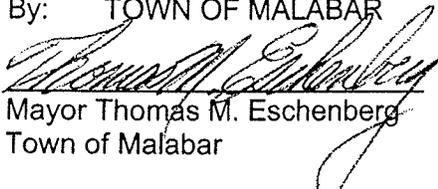
□

Council Member Patricia (Pat) D. Dezman

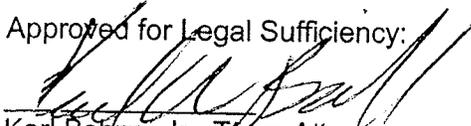
Aye

This Resolution was then declared to be duly passed and adopted this 21st day of July, 2008.

By: TOWN OF MALABAR


Mayor Thomas M. Eschenberg
Town of Malabar

Approved for Legal Sufficiency:


Karl Bonne, Jr., Town Attorney

ATTEST:


Debby K. Franklin
Town Clerk/Treasurer

(seal)

(EXHIBIT "A" BEGINS ON NEXT PAGE)

**EXHIBIT "A"****I. NATURE OF QUASI-JUDICIAL HEARINGS**

Certain standards of basic fairness must be provided in quasi-judicial proceedings. A quasi-judicial hearing meets due process requirements if the parties are provided notice of the hearing and a fair opportunity to be heard in person or through counsel, the right to present evidence and cross-examine witnesses and the right to be informed of all the facts upon which the Board acts.

II. ORDER OF PROCEEDINGS

1. Counsel for the Board or Council shall remind the Board or Town Council that the matter before them is a quasi-judicial hearing and that rules of procedures have been adopted governing these proceedings.

2. Florida law does not require that witnesses be sworn in at a quasi-judicial hearing. The Board may want to have the witnesses sworn. If it chooses to do so then the Chair directs Clerk or attorney to swear in witnesses en masse.

a. Counsel for the Board or Council shall advise such body of the need to swear in witnesses. The Clerk or attorney has all witnesses stand and swear to the following: "do you swear and affirm that the testimony you will give before the Board or Council will be the truth, the whole truth and nothing but the truth so help you God?" Clerk or attorney announces witnesses have been sworn. An attorney shall be present representing the Board or Council at all quasi-judicial proceedings.

b. The Chair announces that anyone testifying before the Board or Council needs to state their name and address for the record.

3. The Chair should announce that any person desiring to present written documentation, photographs or other documentary evidence must give a copy of the documents to the Clerk and may provide the Board members a copy as well.

4. Chair announces that all ex parte communications and any pre-hearing site visitations must be disclosed. Such disclosure shall include the date of the communication and/or site visit, whom the communication and/or site visit was with, and a summary of the communication and /or site visit.

5. Petitioner's presentation:

a. Petitioner or Petitioner's representative may make an opening statement by presenting its position, introducing documentation or other evidence.

b. Petitioner may then call witnesses.

c. Any person desiring to cross-examine Petitioner's witnesses may do so.

6. Testimony and presentation of evidence by the public, either in support or against the Petitioner.

□

a. Time limit for such presentations by the public shall be 3 minutes. The Board or Council has the discretion to enlarge any time limitations.

b. If there is an authorized representative of a group of citizens or public, (by way of example and not limitation, a representative of a homeowner's association, condominium association or other type of property association, private clubs, churches, or other governmental agencies) then that person would be given 3 minutes to present its case on behalf of the property owner's association. Unless there is different testimony to be presented by a member of the same association, no other person within the property owner's association will be permitted to testify. The Board or Council has the discretion to enlarge any time limitations.

c. Cross-examination of any person of the public who has given testimony.

7. Staff's presentation:

a. Staff may make an opening statement.

b. Staff may call witnesses and present evidence.

c. Staff may be cross-examined by any person. Once the evidence has been presented, the Chair shall close the public hearing and bring the matter back to the Board or Council for any additional questions they may have of any person who participated in the public hearing. However, no discussion amongst the Board or Council members shall be made unless and until a motion and a second have been made.

III. BOARD OR COUNCIL DISCUSSES AND VOTES.

1. When a decision is made by a body that has final decision making authority, the Town Attorney shall prepare a written order to be signed by the chairperson and such order shall become final when filed with the Clerk.

IV. REHEARING/RECONSIDERATION.

There is no specific rule or statutory authority for the rehearing or reconsideration of a local agency decision; however, a local agency has the inherent power and authority to rehear and reconsider a previously entered order. The Town has determined that, notwithstanding this inherent power and authority, no rehearing or reconsideration shall be entertained regarding a previously entered order of any quasi-judicial board of the Town.