**ORDINANCE NO. 2011 - XX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS; ADOPTING REGULATIONS OF PAIN MANAGEMENT CLINICS AS DEFINED, TO BE CODIFIED AT SECTIONS 16-232 THROUGH 16-237, ARTICLE VIII, CHAPTER 16, CITY OF PALM COAST CODE OF ORDINANCES; PROVIDING FOR DEFINITIONS, FINDINGS OF FACT AND INTENDED PURPOSE, AND SUPPLEMENTAL REGULATIONS OF PAIN MANAGEMENT CLINICS, APPLICABILITY, PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Flagler County Sheriff has informed the Palm Coast City Council (“City Council”) that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating throughout the State of Florida; and

**WHEREAS**, the illegal distribution of prescription drugs, increased crime associated with such activity, and the health concerns in Flagler County and Palm Coast relating to prescription drug abuse create an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the Palm Coast citizens; and

**WHEREAS**, on December 21, 2010, the City Council adopted Ordinance No. 2010-18 to implement a moratorium which shall expire on December 31, 2011, on the issuance of any new Local Business Tax Receipts for pain management clinics, to direct City staff to analyze the effects of pain management clinics on the Palm Coast community and to prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens of the City by local regulation of pain management clinics, to restrict cash only operations, and to regulate hours of operation of existing clinics through the period of the moratorium; and

**WHEREAS**, the State of Florida, Flagler County Sheriff, the City Council and City staff have identified negative adverse secondary effects associated with pain management clinics that necessitate a recommendation for certain changes to the Palm Coast code that will result in additional substantive regulations, compatible with the State of Florida initiatives, for pain management clinics in Palm Coast.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA:

***Section 1.* *Creation of Pain Management Clinic Ordinance.*** A Pain Management Clinic Ordinance is hereby created to read as follows, to be codified at Article VIII, Chapter 16, Palm Coast City Code.

 ***Section 2.*** ***Title.***

This Ordinance shall be known as the “Pain Management Clinic Ordinance”.

 **Sec. 16-232. Findings of Fact; Intent and Purpose.**

1. The Flagler County Sheriff informed the City Council that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating throughout the State of Florida ; and
2. The illegal distribution of prescription drugs, increased crime associated with such activity, and the health and safety issues relating to prescription drug abuse has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of City citizens; and
3. The Florida Legislature has identified concerns regarding the increased use and abuse of substances controlled by federal and/or state law and the frequency of injury and death occurring as a result of the increased availability of controlled substances via medical practitioners operating in pain management clinics or facilities; and
4. Florida Statutes require physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and
5. The negative secondary impacts associated with the certain pain management clinics include the congregation of drug users and drug addicted persons outside of pain management clinics in a manner that has a negative effect on the willingness of residents to patronize nearby businesses and which disturbs nearby residents all hours of the day but particularly in the early morning and late evening hours thus creating an urgent situation necessitating immediate investigation into and potential regulation of such clinics in Palm Coast; and
6. It is not the intent of this Ordinance to interfere with the legal prescription, dispensation, or use of controlled substances; and
7. Under its home rule authority Palm Coast can pass additional legislation to further regulate pain management clinics as long as these additional regulations are not preempted in the law and are not inconsistent with the statutory provisions.

**Sec. 16-233. Definitions.**

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

 *“Acute Pain”* means the normal, predicted, physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with surgery, trauma, or illness. It is generally short-lived. Acute Pain responses may vary between patients and between pain episodes within an individual patient. Acute Pain episodes may be present in patients with Chronic Pain.

 *“Chronic Pain”* *or “Chronic Non-Malignant Pain”* means pain unrelated to cancer or rheumatoid arthritis which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

 *“City”* means the City of Palm Coast, Florida.

 *“Dangerous Drugs”* means a controlled substance listed in Schedule II and Schedule III in Section 893.03, Florida Statutes as amended from time to time, specifically opiate analgesic and benzodiazepine drugs.

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

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

 *“Pain Management”* means the use of pharmacological and non-pharmacological interventions to control a patient’s identified pain. Pain Management often extends beyond pain relief, encompassing the patient’s quality of life, ability to work productively, to enjoy recreation, and to function normally in family and society.

 *“Pain Management Clinic”* means any publicly or privately-owned facility:

1. That advertises in any medium for any type of pain-management services; or
2. Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

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

**Sec. 16-234. Exceptions.**

Businesses with one of the following characteristics are not regulated by this Section:

1. Licensed as a hospital or other licensed facility pursuant to Chapter 395, Florida Statutes, as may be amended;
2. The majority of the physicians who provide services in the clinic primarily provide surgical services;
3. 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 dollars:
4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
5. Does not prescribe controlled substance for the treatment of pain;
6. Owned or operated by a governmental entity for the sole purpose of serving that governmental entity.
7. The clinic is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or
8. The clinic is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowship in pain medicine approved by the Accreditation Council for Graduate Medical Education, or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties and perform interventional pain procedures of the type routinely billed using surgical codes.

**Sec. 16-235. Regulation of pain management clinics.**

Pain Management Clinics shall be subject to the following supplemental regulations and the physician designated as responsible for complying with all requirements related to registration and operation of the Pain Management Clinic shall ensure compliance herewith as follows:

1. *Display of licenses*. Any Pain Management Clinic shall be validly registered with the State of Florida and with the City and shall prominently display in a public area near its main entrance copies of all state licenses, City licenses, and Occupational License/Local Business Tax Receipts, and the name of the owner and designated physician responsible for compliance with state and City law.
2. *Minimum floor area.* A Pain Management Clinic shall have a total leasable floor area of not less than one thousand (1,000) square feet.
3. *Activities in enclosed areas.* All activities of Pain Management Clinics, including sale, display, preparation and storage, must be conducted entirely within a fixed and completely enclosed business. Pain Management Clinics shall not provide outdoor waiting areas, such as seating and queues.
4. *Facility and Physical Operations.* Pain Management Clinics shall provide the following:
	1. emergency lighting and communications (land line telephone),
	2. reception and waiting area,
	3. restroom(s),
	4. administrative area, including room for storage of medical records, supplies, and equipment,
	5. private patient examination room,
	6. treatment rooms, if treatment is being provided to patients,
	7. a printed sign located in a conspicuous place in the waiting room viewable by the public with the name and contact information of the clinic’s designated physician and all physicians practicing in the clinic.
5. *Drive-thru.* Pain Management Clinics shall not provide drive-thru window operations or services.
6. *Alcoholic beverages*. Alcoholic beverages shall be prohibited from being sold on the premises.
7. *No loitering*. The Pain Management Clinic shall not direct or encourage any patient or business invitee to stand, sit (including in parked car), gather, or loiter outside of the building where the clinic operates, including in any parking area, sidewalk adjacent, right-of-way, or neighboring property for any period of time longer than that reasonably required to arrive and depart. The Pain Management Clinic shall post conspicuous signs stating that no loitering is allowed on the property.
8. *Operating hours*. Regular business hours for Pain Management Clinics are limited from Monday through Saturday and only during the hours of 7:00 a.m. to 7:00 p.m. and shall only provide emergency services outside the regular business hours.
9. *Landlord responsibility*. Any landlord who knows, or in the exercise of reasonable care should know, that a Pain Management Clinic is operating in violation of the Palm Coast Code, or applicable Florida law, including the rules and regulations promulgated by the Department of Health, Board of Medicine, or Board of Osteopathic Medicine, shall have the responsibility to stop or take reasonable steps to prevent the continued illegal activity on the leased premises. Landlords who lease space to a Pain Management Clinic must expressly incorporate language into the lease or rental agreement stating that failure to comply with the Palm Coast code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.
10. *Compliance with other laws*. A Pain Management Clinic shall at all times be in compliance with all federal and state laws and regulations and the Palm Coast Code.
11. *Patient payment options*. No Pain Management Clinic shall limit patient payment options to cash only.
12. *Certificate of Use*. A Pain Management Clinic must apply for and receive a Certificate of Use from the City at the time that it seeks issuance or renewal of the Local Business Tax Receipt for the business, or at any time that there is a change of owner or the physician of record, pursuant to Section 458.3265, Florida Statutes or Section 459.0137, Florida Statutes, as amended. This application for Certificate of Use shall establish, and shall be updated as needed:
13. owner or operator of the facility;
14. proof of registration with the Florida Department Health, pursuant to Section 458.3265 or Section 459.0137, Florida Statutes. If the registration of the Pain Management Clinic is revoked or suspended by the Florida Department of Health, the City’s Certificate of Use shall be revoked automatically and shall not be subject to the provisions herein;
15. the application for a Certificate of Use shall include an affidavit by the owner or the physician of record, pursuant to Section 458.3265 or Section 459.0137, Florida Statutes, as amended, attesting to the fact that no employee of the business, nor any independent contractor or volunteer having regular contact with customers of the business, has been convicted of a drug related felony within the five (5) year period prior to the date of the application, and that the business shall not employ or allow any such convicted employee, independent contractor or volunteer on the premises thereafter.
16. the application shall contain a sketch of the intended business to confirm compliance with the business/floor plan requirements of this Section. The sketch shall confirm that the Pain Management Clinic will not have any outdoor waiting areas such, such as seating or queues.
17. a copy of the lease agreement for business location.

**Sec. 16-236. Application to Existing Pain Management Clinics.**

All Pain Management Clinics legally in existence prior to the effective date of this Section, shall comply with the requirements herein within 365 days of the effective date of this Section. Any Pain Management Clinic legally in existence prior to the effective date of this Section, but now in violation of this provision due to the Pain Management Clinic’s failure to meet the requirements of this section, shall be considered a legal nonconforming use for a period of one (1) year from the effective date of this Section. After the one (1) year period of time, such nonconforming use shall be removed or discontinued.

If at any time the City determines that a Pain Management Clinic is operating in any manner that is inconsistent with, or contrary to the provisions of this Chapter, or any other applicable Code or statutes, the City may revoke the Certificate of Use through the process outlined herein or as allowed by State Statutes.

**Sec. 16-237.** **Penalties.**

Unless as otherwise provided herein, violations of this Article shall be punishable in accordance with Section 35 of the City of Palm Coast Code of Ordinances. In addition, the City may bring any other action available at law or equity to penalize or enjoin violations of this Article.

***Section 3****.* It is declared to be the intent of the City Council of the City of Palm Coast, Florida, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance, is held to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not be construed as to render unconstitutional or invalid the remaining provisions of this Ordinance.

***Section 4.* Effective Date.** This Ordinance shall become effective January 1, 2012.

Approved on first reading this\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 2011.

Adopted on the second reading after due public notice and hearing City of Palm Coast this\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 2011.

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|  | **CITY OF PALM COAST, FLORIDA** |
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| ATTEST: | Jon Netts, Mayor |
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|  |
| VIRGINIA A. SMITH, City Clerk |  |

**APPROVED AS TO FORM AND LEGALITY:**

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William E. Reischmann Jr. Esquire

City Attorney