

MEMORANDUM

To: The Honorable Jon Netts, Mayor and City Council

From: William E. Reischmann, Jr., Esquire

Subject: ***Pain Management Clinics***

Cc: Jim Landon, City Manager
Virginia Smith, City Clerk

Date: September 6, 2011

Consistent with the City Council's prior discussion of the status and the necessity of local regulation of pain management clinics, given the recent enactment by the Florida legislature of House Bill 7095 and the initiation of the Prescription Drug Database, and as the Council has requested options that might be available to the City of Palm Coast with regard to local regulation of these establishments, I provide the following for discussion: (This is not intended to be a legal recommendation of options.)

- (1) Zoning.
 - (a) Placement in certain zoning categories as conditional uses.
 - (b) Placement in certain zoning categories as permitted uses.
 - (c) Locational restrictions to separate the clinics from each other and/or from specified other types of uses, i.e. places of worship, child care centers, educational centers, etc.

- (2) Regulations as to location, design, operation and maintenance.
 - (a) Separate from required state licenses and certificates, a local process for an application for issuance of a certificate of use, permit or license. This could confirm zoning approval as well as design, operation and maintenance regulations.
 - (b) Disclosure of owners and operators of any proposed facility; disclosure of physician of record, as required by state statute.
 - (c) Proof of registration with the Florida Department of Health, prior to the local issuance of certificate of use or license.
 - (d) Automatic revocation of local certificate/permit or license upon revocation or suspension of the state registration with the Florida Department of Health.
 - (e) Local application to include an affidavit by the owner or the physician of record affirming that no business employee, nor any independent contractor or volunteer, having contact

with customers, has been convicted of a drug related felony within a time certain from the date of the application; and that the proposed pain clinic business shall not employ or allow such convicted employee, contractor or volunteer on the premises thereafter.

- (f) Hours of operation; days of operation.
- (g) Requirement that the state and local certificates/permits or licenses be posted in a conspicuous location near the entrance of the facility.
- (h) Parking requirements; customer waiting area requirements (lobby, sitting area, etc.).
- (i) Prohibition of any outdoor seating, cues, or customer waiting areas; requirement that all uses and operation of any pain management clinic, including, but not limited to, the sale, display, preparation and/or storage shall be conducted entirely within a completely enclosed building.
- (j) Requirement that the aforescribed locational and operational requirements shall apply to any pain management clinics legally in existence (obviously excluding any medical establishments not fitting the definition of "pain management clinics", as defined under state law).
- (k) Upon determination by the City that there is a violation by a pain management clinic of any of the aforescribed locational or operating requirements, that the previously issued certificate, permit or license be revoked.
- (l) Any on-site sale, provision of dispensing of a controlled substance would be prohibited, except as specifically set forth in federal or state law.
- (m) Minimum floor area.
- (n) No sale or distribution of alcoholic beverages on the premises, including the parking areas, sidewalks or adjacent right of way.
- (o) No loitering, i.e., including, but not limited to, patients or business invitees inside or outside of the building or in a parked car, in any parking area, sidewalk, adjacent, right of way or a neighboring property. Requirement for a conspicuous sign consistent therewith.
- (p) Maintenance of personnel records for compliance with state and local regulations.
- (q) Responsibility of landlord (as applicable) to comply or to have responsibility to stop or take reasonable efforts to prevent the continued illegal activity on their leased premises.