

ORDINANCE NO. 06-2011

AN ORDINANCE OF THE CITY OF CAPE CANAVERAL, FLORIDA, AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES RELATED TO PAIN MANAGEMENT CLINICS; PROVIDING THAT PAIN MANAGEMENT CLINICS MAY BE PERMITTED AS SPECIAL EXCEPTIONS IN THE C-1 AND C-2 ZONING DISTRICTS; AMENDING DEFINITIONS; PROVIDING FOR SUPPLEMENTAL DISTRICT REGULATIONS APPLICABLE TO PAIN MANAGEMENT CLINICS; PROVIDING PAIN MANAGEMENT CLINIC SPECIAL EXCEPTION REVOCATION PROCEDURES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; INCORPORATION INTO THE CODE; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, over the course of the past several months, the City Council has been made aware by local and national news reports 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, many local governments in South Florida have adopted ordinances to regulate these pain management clinics; and

WHEREAS, given the adoption of these ordinances and because of the lax enforcement of these clinics until recently, published news reports describe a "pipeline" of drugs being trafficked from South Florida pain management clinics north to other areas of Florida and to other states; and

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

WHEREAS, the State of Florida has attempted, in section 458.3265, Florida Statutes, 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 legitimate medical clinics or the legal use of controlled substances, and rather to regulate the location of dispensing of narcotic drugs on site at pain management 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 City Council of the City of Cape Canaveral, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cape Canaveral.

BE IT ORDAINED by the City Council of the City of Cape Canaveral, Brevard County, Florida, as follows:

Section 1. **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cape Canaveral.

Section 2. **Code Amendment.** Chapter 110, Zoning, of the Code of Ordinances, City of Cape Canaveral, Florida, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from this Ordinance of text existing in Chapter 110. It is intended that the text in Chapter 110 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

CHAPTER 110. ZONING

ARTICLE I. IN GENERAL

Sec. 110-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Chronic nonmalignant 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.

* * *

Medical or dental Clinic means a building where patients, who are not lodged overnight, are admitted for examination and treatment by one person or group of persons practicing any form of the healing arts services to individuals, whether such persons are medical doctors, chiropractors, osteopaths, chiropodists, naturopaths, optometrists, dentists or any similar profession, the practice of which is licensed in the state. The term does not include a place for the treatment of animals and does not include pain management clinics.

* * *

Pain management clinic means a publicly or privately owned facility that advertises in any medium for any type of pain-management services; or where in any month, a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain. Registration with the Florida Department of Health pursuant to sections 458.3265 or 459.0137, Florida Statutes, shall be prima facie evidence of operating as a pain management clinic. Expressly exempted from this definition are hospitals, nursing homes, ambulatory surgical care centers, hospice or intermediate care facilities for the disabled, or clinics which are affiliated with an accredited medical school at which training is provided for medical students, residents or fellows.

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ARTICLE VII. DISTRICTS

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DIVISION V. C-1 LOW DENSITY COMMERCIAL DISTRICT

* * *

Sec. 110-332. Principal uses and structure.

In the C-1 low density commercial district, the following uses and structures are permitted:

* * *

(3) Professional offices, studios, medical or dental clinics, laboratories, general offices, business schools and similar uses.

* * *

(6) Public and semipublic parks, playgrounds, clubs and lodges, cultural facilities, hospitals, medical or dental clinics, mortuaries, funeral homes, government offices, schools, churches and similar uses.

* * *

Sec. 110-334. Special exceptions permissible by board of adjustment.

* * *

- (c) Special exceptions may be permitted for the following:

* * *

(17) Pain management clinics, subject to the requirements of section 110-489 of this Code.

* * *

DIVISION VI. M-1 LIGHT INDUSTRIAL AND RESEARCH AND DEVELOPMENT DISTRICT

* * *

Sec. 110-352. Principal uses and structures.

In the M-1 light industrial and research and development district, the following uses and structures are permitted, provided any use or group of uses that are developed, either separately or, if developed as a unit with certain site improvements, shared in common, meet requirements of article IX of this chapter:

- (1) General offices, studios, medical and dental clinics, laboratories, data processing and similar uses.

* * *

DIVISION VIII. C-2 COMMERCIAL/MANUFACTURING DISTRICT

* * *

Sec. 110-381. Principal uses and structures.

In the C-2 commercial/manufacturing district, the following uses and structures are permitted:

* * *

(4) Professional offices, studios, medical and dental clinics, laboratories, general offices, business schools, data processing and similar uses.

* * *

(8) Noncommercial public parks; commercial indoor playgrounds; clubs and lodges; cultural facilities; hospitals; medical and dental clinics; mortuaries and funeral homes (excluding crematories); government offices; schools; adult and youth centers; churches; reading rooms and similar uses.

* * *

Sec. 110-383. Special exceptions permissible by the board of adjustment.

* * *

(c) Special exceptions may be permitted for the following:

* * *

(14) Pain management clinics, subject to the requirements of section 110-489 of this Code.

* * *

ARTICLE IX. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 1. GENERALLY

* * *

Sec. 110-489. Pain management clinic regulations.

Pain management clinics may only be permitted by special exception in the C-1 and C-2 zoning districts, subject to the general conditions for special exceptions and subject to the following requirements:

(a) Pain management clinics must be registered with the State of Florida as required by Florida law. Proof of registration, application for registration, or letter of exemption must be provided with the special exception application for the pain management clinic.

(b) Each pain management clinic shall be operated by a medical director who is a Florida-licensed physician, board-certified in pain medicine, and who shall be responsible for complying with all requirements related to registration and operation of the clinic. The

designated physician must have a full, active, and unencumbered license under Chapter 458 or 459, Florida Statutes, and shall practice at the clinic location for which the physician has assumed responsibility. Within ten (10) days after termination or absence of the medical director, the clinic must notify the City of the identity of another medical director for the clinic.

(c) There shall be no less than one-half (½) mile distance between each pain management clinic regardless of the municipal boundaries of the City.

(d) No pain management clinic shall be permitted to locate within 1,000 feet of any public or private school or daycare facility.

(e) Pain management clinics shall only be permitted to operate between the hours of 9:00 AM and 7:00 PM, Monday through Friday, and 9:00 AM to 5:00 PM on Saturday.

(f) There shall be no outdoor seating areas, queues, or customer waiting areas. All activities of the pain management clinic, including sales, display, preparations and storage, shall be conducted entirely within an enclosed building.

(g) Limiting payment for goods or services to cash only is prohibited.

(h) Pain management clinics shall be required to submit to the Brevard County Sheriff's Office a daily summary containing the following information from the prior business day:

(1) The total number of prescriptions written that day;

(2) The total number of doses of drugs sold and/or dispensed by the pain management clinic that day (including samples), specifying how many doses were sold or dispensed; the person prescribing or dispensing same; and the manner of payment by each person who was dispensed drugs at the clinic that day; and

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

(i) A pain management clinic shall not be permitted as a home occupation.

(j) 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 (5) years prior to the receipt of any application for special exception, (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 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.

(k) 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 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.

(l) No pain management clinic shall employ any person, as an independent contractor or otherwise, 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 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 within the five (5) years preceding the application for special exception.

(m) The pain management clinic shall at all times be subject to the requirements of all applicable federal, state, county and local laws and ordinances, as they may be amended from time to time.

(n) *Additional application information.* An applicant seeking a special exception for a pain management clinic shall, in addition to the general application information required for special exceptions, provide the following:

(1) The pain management clinic's registration number issued by the Florida Department of Health, as required by Florida law.

(2) Name of the medical director, as required herein, responsible for complying with all requirements related to operation of the pain management clinic and the medical director's Drug Enforcement Agency number.

(3) A list of all persons associated with the management or operation of the pain management clinic, whether paid or unpaid, part-time or full-time, including all contract labor and independent contractors. This list shall include, but not be limited

to, all owners, operators, employees and volunteers. For persons listed, the following additional information must be provided:

- (A) Person's title, current home address, telephone number and date of birth;
 - (B) List of all criminal convictions whether misdemeanor or felony; that are drug related;
 - (C) A copy of a current Florida driver's license or government issued photo identification; and
 - (D) A set of fingerprints.
- (4) If the property owner is different from the owner of the pain management clinic, the applicant shall provide the name, address, telephone number and a copy of a Florida driver's license or government issued photo identification of the property owner along with the application.
- (5) An inventory of diagnostic equipment to be located at the clinic;
- (6) A natural disaster management plan;
- (7) 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.
- (8) An affidavit of the medical director, signed under oath, attesting:
- (A) That their practice is located at the subject pain management clinic;
 - (B) That no employees of the facility have been convicted of a drug-related felony within the five (5) years preceding the application for special exception;
 - (C) That the pain management clinic will not knowingly employ any such convicted felons thereafter; and
 - (D) That the medical director shall be required to inform the City within ten (10) days should the medical director be terminated or otherwise leave the affiliation of the pain management clinic as medical director.

The medical director shall be required to keep all application information updated with the City at all times, even after issuance of a special exception, and said information shall be

verified annually by the City in conjunction with the City's local business tax receipt renewal process. The medical director shall notify the City of any change to the information within ten (10) days of any new person becoming associated with the pain management clinic or any other change to the application information required herein. Failure to properly maintain updated information with the City shall be grounds for revocation of the pain management clinic special exception.

(p) Any special exception granted for a pain management clinic may be temporarily suspended or absolutely revoked by majority vote of the board of adjustment at a public hearing, when the board of adjustment has determined by competent substantial evidence that either:

(1) The pain management clinic has obtained the special exception upon false statements, fraud, deceit, misleading statements, or suppression of material facts;

(2) The pain management clinic has committed substantial violations of the terms and conditions on which the special exception was granted;

(3) The pain management clinic no longer meets the requirements of this section or other applicable law; or

(4) The medical director or any other employee of the pain management clinic knowingly allowed illegal activities to be conducted on the premises.

Prior to any special exception being revoked, the pain management clinic shall be provided with minimum due process including notice of the grounds for revocation and hearing date, an opportunity to be heard, the right to present evidence, and the right to cross-examine adverse witnesses.

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Secs. ~~110-489~~, 110-490. Reserved.

Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 4. Incorporation Into Code. This Ordinance shall be incorporated into the Cape Canaveral City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Brevard County Pain Management Clinic Countywide Moratorium. Nothing herein shall be construed as the City of Cape Canaveral opting out of the countywide moratorium imposed on August 3, 2010 by the Brevard County Board of County Commissioners ("BCC") on the issuance of business tax receipts for pain management clinics pursuant to Ordinance 2010-13, as extended by the BCC on February 22, 2011, August 23, 2011, and as may be further extended by the BCC subsequent to the effective date of this Ordinance.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cape Canaveral, Florida.

ADOPTED by the City Council of the City of Cape Canaveral, Florida, this 18th day of October 2011.

ATTEST:


ANGELA APPERSON, City Clerk


Rocky Randels, Mayor

	For	Against
Bob Hoog	<u>Motion</u>	_____
John Bond	<u>X</u>	_____
Buzz Petsos	<u>Second</u>	_____
Rocky Randels	<u>X</u>	_____
Betty Walsh	<u>X</u>	_____

First Legal Ad published:	September 8, 2011
First Reading:	September 20, 2011
Second Legal Ad published:	October 5, 2011
Second Reading:	October 18, 2011

Approved as to legal form and sufficiency
for the City of Cape Canaveral only by:


ANTHONY A. GARGANESE, City Attorney