

ORDINANCE NO. 10-068

AN ORDINANCE OF POLK COUNTY TO BE CITED AS THE "PAIN MANAGEMENT CLINIC ORDINANCE"; PROVIDING FOR LEGISLATIVE FINDINGS AND AUTHORITY; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; REQUIRING LICENSURE OF CERTAIN PAIN MANAGEMENT CLINICS BY OCTOBER 15, 2010; CREATING A LICENSE APPLICATION PROCESS; ESTABLISHING AN APPLICATION AND LICENSE FEE; PROVIDING FOR GROUNDS TO DENY OR REVOKE A LICENSE; PROVIDING FOR REVIEW OF DENIAL OR REVOCATION; PROVIDING FOR LICENSE COMPLIANCE REQUIREMENTS; PROVIDING FOR LICENSE RENEWALS; PROVIDING FOR VIOLATIONS AND INSPECTIONS; PROVIDING FOR SERVICE OF NOTICE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR ALLOCATION OF FEES AND FINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE POLK COUNTY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Polk County Board of County Commissioners ("Polk County") has been advised by the Polk County Sheriff's Office that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating in and around Polk County; and

WHEREAS, the illegal narcotic activity and increased crime associated with such clinics has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of Polk County citizens; and

WHEREAS, the Florida Legislature has identified identical concerns regarding the increased use and frequency of injury and death occurring through use of certain pain management clinics by persons obtaining prescription drugs for improper purposes. Additionally, 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

WHEREAS, many counties and municipalities in Florida have established moratoria on certain new pain management clinics to curb negative impacts created by these clinics, such as illegal prescription drug trafficking and sales of illegal drugs around

the clinics, loitering by pain clinic customers while waiting in long lines to receive drugs and loitering in areas surrounding the clinics; and

WHEREAS, the illegal activities associated with certain pain management clinics creates an emergency situation necessitating immediate regulation of such clinics in Polk County; and

WHEREAS, the Polk County Sheriff's Office has advised Polk County that in 2009, approximately fifty-six percent of the deaths in Polk County had some type of prescription drug present in their system at the time of their death; and

WHEREAS, Polk County has determined that licensing certain existing businesses operating as pain management clinics within the jurisdiction of Polk County will provide local oversight of these businesses and discourage illegal activities related to these clinics; and

WHEREAS, it is not the intent of this Ordinance to interfere with legitimate medical clinics or the legal use of controlled substances; and

WHEREAS, Section 162.09(2)(d), Florida Statutes, authorizes a county having a population equal to or greater than 50,000 to adopt by a vote of least a majority plus one of the entire governing body of the county to give code enforcement boards or special magistrates the authority to impose a fine up to \$1,000 per day per violation for a first violation of an ordinance, up to \$5,000 per day per violation for a repeat violation of an ordinance, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature; and

WHEREAS, Polk County's population is greater than 50,000 and the Board of County Commissioners of Polk County intends to authorize the Polk County Code Enforcement Special Magistrates pursuant to Section 162.09(2)(d), to impose a fine up to \$1,000 per day per violation for a first violation of this Ordinance, up to \$5,000 per day per violation for a repeat violation of this Ordinance and up to \$15,000 per violation if the Special Magistrate finds a violation of this Ordinance to be irreparable or irreversible in nature; and

WHEREAS, Polk County, by and through its Board of County Commissioners, wishes to promote, protect and improve the health, safety and welfare of the citizens of Polk County; and

WHEREAS, Polk County finds and declares a need to impose regulations on certain pain management clinics and to limit the number of pain management clinics licensed to operate in Polk County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA:

SECTION 1: TITLE.

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

SECTION 2: LEGISLATIVE FINDINGS AND AUTHORITY.

The recitals set forth above are incorporated herein. POLK COUNTY finds and declares there exists an emergency need to enact an ordinance requiring the regulation of certain pain management clinics operating in Polk County and to prevent the opening of any new clinics, except as prescribed herein. This Ordinance is enacted pursuant to Florida Statutes Section 125.66, and under the home rule powers of Polk County and is in the best interest of the health, peace, safety and general welfare of the people of Polk County.

SECTION 3: PURPOSE AND INTENT.

The purpose and intent of this Ordinance is to promote the health, safety and general welfare of the residents of Polk County through the regulation of certain pain management clinics currently in operation and to prevent the opening of any additional pain management clinics, except as prescribed herein.

SECTION 4: DEFINITIONS.

- A. Chronic Nonmalignant Pain means pain unrelated to cancer, which persists beyond the usual course of the disease or injury that is the cause of the pain, for more than ninety (90) days after surgery.
- B. Code Enforcement Officer means any authorized employee of Polk County whose duties designated by the County Manager include investigating alleged violations of Polk County codes and ordinances, and may be referred to as “Code Enforcement Investigator” or “Code Inspector”.
- C. Division shall mean the Building and Codes Division or other Polk County division or division unit designated by the County Manager to administer this Ordinance.
- D. Pain Management Clinic means any privately owned pain management clinic, facility or office which advertises in any medium for any type of pain management services, or which employs a physician who is primarily engaged in the treatment of pain, and is required to register with the Florida Department of Health pursuant to Florida Statutes Sections 458.3265 or 459.0137 as may be amended. A physician will be considered 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. Also included in

this definition are centers designating themselves as a pain research center and, which may or may not be required to be registered with the State even though controlled substance medications are dispensed or prescribed to patients. Pain Management Clinic does not include clinics:

1. Licensed as a facility pursuant to Florida Statutes Chapter 395 as may be amended;
 2. Where 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. That do not prescribe or dispense controlled substances for the treatment of pain; or
 6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) as may be amended.
- E. License shall mean a certificate issued pursuant to this Ordinance by the Division on an annual basis, authorizing the operation of a specific Pain Management Clinic location in Polk County and which contains the State's required registration number on its face, if applicable. Each License shall identify the Pain Management Clinic's physical address and have a unique numeric identifier on its face.

SECTION 5: LICENSE REQUIRED.

Beginning October 15, 2010, no Pain Management Clinic may operate in Polk County without first obtaining a Pain Management Clinic License issued by the Division; except that any Pain Management Clinic that was operating prior to the enactment of this Ordinance who has filed an application and paid the application fee may continue operating until the Division renders a decision to either grant or deny the License and notifies the Pain Management Clinic of the decision. The Pain Management Clinic must obtain its License, if approved, from the Division within two business days of notification by the Division.

SECTION 6: APPLICATION PROCESS.

Any Pain Management Clinic must complete an application available from the

Division which shall at a minimum require the applicant to provide the following information:

1. The registration number from the State Department of Health as required by Florida Statutes Section 458.3265 or 459.0137 as may be amended, if the Pain Management Clinic must be registered in accordance with state law;
2. Proof satisfactory to the Division that the applicant is or has been conducting business in Polk County as a Pain Management Clinic at the registered location for which the applicant is seeking a Polk County License prior to and up through October 14, 2010;
3. Designation of the physician who shall be responsible for complying with all requirements related to registration and operation of the Pain Management Clinic and the physician's DEA number. The designated physician must have a full, active, and unencumbered license under Florida Statutes Chapters 456 or 459 and shall practice at the Pain Management Clinic location for which the physician has assumed responsibility. Within ten (10) days after termination or absence of a designated physician, the Pain Management Clinic must notify the Division of the identity of another designated physician for the Pain Management Clinic or forfeit the Pain Management Clinic's License;
4. A list of all persons associated with the ownership, 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, partners, member, trustees, operators, employees and volunteers. The application shall also designate a contact person who shall be the point of communication between Polk County and the applicant during the application and License renewal process. For the persons listed, the following additional information must be provided:
 - A. The person's title;
 - B. A current home address, telephone number and date of birth;
 - C. A list of all criminal convictions whether misdemeanor or felony;
 - D. A copy of a current Florida driver's license or a government issued photo I.D.; and
 - E. A set of fingerprints.
5. The property owner's name, address, telephone number and a copy of a Florida driver's license or a government issued photo I.D., if the property owner is different than the manager or operator.

6. A copy of a valid business tax receipt required pursuant to Florida Statutes Chapter 205, issued before October 15, 2010;
7. Any other information the Division Director deems necessary; and
8. A sworn and notarized statement from the designated physician attesting to the veracity and accuracy of the information provided in the application.

It is the applicant's responsibility to provide full and accurate contact information when submitting the application to the Division. If the application for a Pain Management Clinic License is not properly completed in the sole discretion of the Division, the Division shall notify the designated contact person listed in the application. A completed application must be received by the Division within fifteen (15) business days of receipt of the deficiency notice from the Division in order to avoid assessment of another application fee. Failure to timely respond within the fifteen (15) business days shall result in a denial of the application as incomplete. A new application must then be submitted that is accompanied by the full nonrefundable application fee. The Division shall perform inspection(s) of the facility as necessary to determine whether or not the application submitted is accurate in all respects and to verify a physician licensed under Florida Statutes Chapter 456 or 459 as may be amended is on the premises during all times medications are dispensed or prescribed. In the event that any information provided in the application changes, an amended application must be filed with the Division in accordance with Section 10 below.

SECTION 7: APPLICATION AND LICENSE FEE.

Each application for a Pain Management Clinic License or License renewal shall be accompanied by a nonrefundable application fee in the amount of One Thousand Five Hundred Dollars (\$1,500.00). The application fee is in addition to the One Thousand Five Hundred Dollar (\$1,500.00) annual License fee. In addition the Pain Management Clinic's application must also include the costs for the national and Florida criminal history record check fees charged by the Florida Department of Law Enforcement for each person listed in Section 6 paragraphs 4 and 5 herein. Any changes to the application or License fees authorized by this Ordinance may be accomplished by Resolution of Polk County without the need to revise this Ordinance.

SECTION 8: LICENSE DENIAL OR REVOCATION FOR CAUSE.

The Division shall provide written notice of the grounds for the denial of any new or renewal application or revocation of an existing License. The Division shall deny or revoke a Pain Management Clinic License or application for cause upon the occurrence of one or more of the following:

- A. The application contains false information;

- B. The applicant fails to file an amended application within the time allotted when any of the information contained in a License application has changed;
- C. The application contains missing information and the applicant fails to provide the requested information within the time allotted;
- D. The Pain Management Clinic is not registered with the State in accordance with Florida Statutes Section 458.3265 or Section 459.0137 as may be amended (if required), or has had its registration suspended or revoked by the State;
- E. Failure to submit a copy of a valid business tax receipt issued prior to October 15, 2010, with the application for each Pain Management Clinic location;
- F. The Pain Management Clinic was not open and fully operational immediately prior to October 15, 2010;
- G. Failure to allow inspection of the Pain Management Clinic by a Code Enforcement Officer, law enforcement officer, or any other person authorized to enforce ordinance violations in Polk County any time anyone is present on the premises;
- H. Failure to comply with any provision of this Ordinance;
- I. Allowing any person to work or volunteer at the Pain Management Clinic, whether paid or unpaid, who has been convicted of or plead guilty or nolo contendere to (even if sealed or expunged) an offense that constitutes a felony for receipt of illicit and/or diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893.03 as may be amended, or any other state, or the United States;
- J. The facility is owned by or has 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; or
 - 3. who has been convicted of or plead guilty or nolo contendere to (even if sealed or expunged) an offense that constitutes a felony for receipt of

illicit and/or diverted drugs, including any controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of Florida Statutes Section 893.03 as may be amended, or any other state, or the United States; or

- K. If the payment for the application fee or License fee is dishonored for any reason.

SECTION 9: REVIEW DENIAL OR REVOCATION OF LICENSE.

The owner of the Pain Management Clinic whose application has been denied (except for an incomplete application) or revoked may request a review before the Polk County Code Enforcement Special Magistrate in writing. The request must be received by Polk County's Code Enforcement Special Magistrate Office within fifteen (15) calendar days, of the date of the notice. The review shall be heard by the Polk County Code Enforcement Special Magistrate. Hearings will be conducted in accordance with the Polk County Code Enforcement Special Magistrate Ordinance which governs code and ordinance violations. The decision of the Polk County Code Enforcement Special Magistrate shall be final. Any Pain Management Clinic that has a License denied or non-renewed (except for an incomplete License), may not re-apply for a period of one (1) year. Any License that has been denied or revoked may not be reissued to any of the owner(s) or the physician(s) listed on the application regardless of the Pain Management Clinic's name for five (5) years except, that when the denial is solely based on an incomplete application, there is no prohibition against reapplying.

SECTION 10: LICENSE COMPLIANCE REQUIREMENTS.

1. A valid License issued pursuant to this Ordinance must be prominently displayed in a common public area of the Pain Management Clinic no later than October 15, 2010.
2. In the event any information contained in the License application changes, an amended application must be filed with the Division within ten (10) days of the change. Additionally, the Pain Management Clinic must provide the costs for the national and Florida criminal history record check fees charged by the Florida Department of Law Enforcement for each person listed in Section 6 paragraphs 4 and 5 herein. Failure to do so will result in License revocation and penalty as provided for in Section 13, below.
3. A License is non-transferable and cannot be assigned. Whenever ownership or management of a Pain Management Clinic changes, a new application must be filed for a new License and all applicable fees paid.
4. A current business tax receipt must be maintained and prominently displayed by the Pain Management Clinic.

5. Any code enforcement officer, law enforcement officer, or any other persons authorized to enforce county ordinances must be allowed access for inspections of the Pain Management Clinic premises at any time anyone is present on the premises.
6. The designated physician shall secure all prescription pads so that only authorized persons may access them. Beginning on October 15, 2010, every prescription written on a prescription pad containing the facility's name shall also include Polk County's License number.

SECTION 11: LICENSE RENEWALS.

Licenses shall be valid for one (1) year. At least thirty (30) days prior to expiration of the License, a renewal application must be submitted, along with a non-refundable renewal application fee of One Thousand Five Hundred Dollars (\$1,500.00). In addition the Pain Management Clinic's renewal application must also include the costs for the national and Florida criminal history record check fees charged by the Florida Department of Law Enforcement for each person listed in Section 6 paragraphs 4 and 5 herein, in the event the list provided with the Pain Management Clinic's original application has changed. Provided the Pain Management Clinic named in the renewal application and all information on the application are in compliance with this Ordinance, a renewal License shall be issued by the Division, after payment of an annual License fee of One Thousand Five Hundred Dollars (\$1,500.00). Renewal Licenses shall only be issued to businesses that were previously licensed and who timely file a renewal application.

SECTION 12: VIOLATIONS AND INSPECTIONS.

It shall be unlawful for any person to violate any provision of this Ordinance or to operate a Pain Management Clinic in Polk County without a valid License. Any code enforcement officer, law enforcement officer, or any other persons authorized to enforce county ordinances may enter the Pain Management Clinic premises and conduct an inspection to determine compliance with this Ordinance at any time anyone is present on the premises. In addition, it shall be a violation of this Ordinance for an owner of real property where the Pain Management Clinic is located to allow an unlicensed Pain Management Clinic to open or operate without a valid License, except as provided in Section 5, unless the property owner can show, upon proper notification, that he or she has taken steps to remove the Pain Management Clinic in violation of this Ordinance from the premises.

SECTION 13: SERVICE OF NOTICE; PUBLIC RECORDS.

Any notice required by this Ordinance shall be in writing and sent by certified mail or hand delivery to the mailing address set forth on the application for the Pain Management Clinic License, except that notices for violations enforced pursuant to the

Polk County Code Enforcement Special Magistrate Ordinance shall be provided in the manner prescribed therein. The mailing address set forth in the application shall be considered the correct mailing address for purposes of notice under the Polk County Code Enforcement Special Magistrate Ordinance.

SECTION 14: ENFORCEMENT AND PENALTIES.

The County's code enforcement officers, law enforcement or any other person authorized to enforce county ordinances may enforce the provisions of this Ordinance. Any enforcement action or legal remedy available under controlling state law, including, but not limited to, prosecution as a misdemeanor with a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty. When enforced by a code enforcement officer, the enforcement provisions and procedures contained in the Polk County Code Enforcement Special Magistrate Ordinance, as may be amended, are incorporated herein by reference and will apply. The Polk County Code Enforcement Special Magistrates are hereby authorize to impose a fine up to \$1,000 per day per violation for a first violation of this Ordinance, up to \$5,000 per day per violation for a repeat violation of this Ordinance and up to \$15,000 per violation if the Special Magistrate finds a violation of this Ordinance to be irreparable or irreversible in nature. In determining the amount of the fines for violations of this Ordinance, the Polk County Code Enforcement Special Magistrate shall consider: 1) the gravity of the violation; 2) any actions taken by the violator; and 3) any previous violations committed by the violator. Nothing contained herein shall prevent the County from taking such other lawful action in law and equity as may be necessary to remedy any violation of any part of this Ordinance, including but not limited to:

1. Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;
or
2. Utilizing any other action or enforcement method permitted by law.

SECTION 15: ALLOCATION OF FEES AND FINES.

Fees collected pursuant to this Ordinance shall be used exclusively to pay for the County's administrative costs including but not limited to the application process, inspections and enforcement activities. To the extent allowed by state law, the Clerk of the Circuit Court, as accountant for Polk County, is hereby directed to deposit civil fines imposed by the Courts collected pursuant to this Ordinance into the Victim Assistance, Consumer Protection, Crime Prevention and Youth Advocacy Trust Fund. Fines collected pursuant to imposition by a Polk County Code Enforcement Special Magistrate shall be deposited into the Code Enforcement Fines Account created pursuant to the Polk County Code Enforcement Special Magistrate Ordinance.

SECTION 16: SEVERABILITY.

If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 17: INCLUSION IN THE POLK COUNTY CODE.

The provisions of this Ordinance shall be included and incorporated in the Polk County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Polk County Code, once established.

SECTION 19: FILING OF ORDINANCE AND EFFECTIVE DATE.

A certified copy of this Ordinance shall be filed with the Florida Department of State. This Ordinance shall take effect upon filing with that office.

STATE OF FLORIDA)

COUNTY OF POLK)

I Richard M. Weiss, Clerk of the Board of County Commissioners of Polk County, Florida hereby certify that the foregoing is a true and correct copy of Ordinance No. 10-068 adopted by the Board on September 15, 2010

WITNESS my hand and official seal of said Board this 17th day of September 2010.

Richard M. Weiss
Clerk to the Board

By Kathryn Courtney
Kathryn Courtney
Deputy Clerk





FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

DAWN K. ROBERTS
Interim Secretary of State

September 20, 2010

Ms. Kathryn Courtney
Deputy Clerk
Finance and Accounting
Polk County
Post Office Box 988
Bartow, Florida 33831-0988

Dear Ms. Courtney:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated September 17, 2010 and certified copy of Polk County Ordinance No. 10-068, which was filed in this office on September 20, 2010.

Sincerely,

Liz Cloud
Program Administrator

LC/srd

RECEIVED
09-24-10 KG
Clerk Of The Board

DIRECTOR'S OFFICE

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