

TOWN OF GRANT-VALKARIA, FLORIDA

ORDINANCE NO. 2010-07

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, PROVIDING FOR REGULATION OF PAIN MANAGEMENT CLINICS; MAKING LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; REGULATING LOCATION AND REQUIREMENTS FOR OPERATION OF PAIN MANAGEMENT CLINICS; PROVIDING FOR SEVERABILITY, REPEAL, AND AN EFFECTIVE DATE.

WHEREAS, the Town 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 Town; and

WHEREAS, the Town 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 Town’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 Town, which could undermine the Town’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 Town's residents, visitors, and businesses are more vulnerable to criminal activities, despite the provision of law enforcement services; and

WHEREAS, the Planning and Zoning 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 Town 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 Town'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 TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, as follows:

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

SECTION 2. A new code hereby adopted regarding Pain Management Clinics to read as follows:

“Sec. 1. Short Title

This legislative enactment may be referred to as the “Pain Management Clinic Code” and may be referred to herein as the “Code”.

Sec. 2. Regulation of Pain Management Clinics.

(a) Definitions.

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

(2) ***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.

(3) ***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.

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

(5) ***School*** means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by F.S. ch. 233. This definition includes a nursery school, kindergarten, elementary school, junior high school, middle school, senior high school or any special institution of learning under the jurisdiction of the state department of education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university. This definition of the term "school" shall also include any educational facility at which minor children reside in conjunction with their educational experience.

(b) **Notwithstanding any provision of the code that allows uses in the BU-1 district as a permitted use in any other zoning district,** Pain management clinics ~~shall be allowed~~ **are only allowed in the BU-1 Zoning District of the Town, and are hereby specifically prohibited in any other zoning category, shall be not be placed closer than 2,500 feet from another pain management clinic,** 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 §893.035 and §89.0356, 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 Town'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 Town for purposes of verification. Town 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 schools, residences, churches, parks, libraries or daycares.

(5) Pain management clinics may operate daily during the hours of ~~8:00~~ 9:00 a.m. to ~~8:00~~ 5:00 p.m.

(6) Each business day, on a form promulgated by the Town, pain management clinics shall provide to the Town Administrator 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 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 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 Town.

(11) 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 at any time. An affidavit shall be submitted to the Town after each new employee is hired, under oath, by the medical director, attesting that the new employee hired in any capacity by the pain management clinic, whether an employee, independent contractor or otherwise, (i) has not 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 within twenty-four (24) hours of date of hire shall result in the automatic revocation of the pain management clinic's right to operate in the Town.

(12) A pain management clinic shall be operated by a medical director who is a Florida-licensed physician, board-certified in pain medicine **and shall provide to the Town with a copy of their active State of Florida license .**

(13) In order to obtain a 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.

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

(d) Zoning review fees for all pain management clinics shall be established by resolution.

SECTION 3. 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 Town Council for the Town of Grant-Valkaria did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town 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 4. Repeal of Inconsistent Provisions. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

This ordinance was passed and adopted at the regular meeting of the Town Council on the 22nd day of September, 2010.

(signature on file)

Del Yonts, Mayor

ATTEST:

(signature on file)

Susanne Krueger, Town Clerk

First Reading: September 8, 2010
Second Reading: September 22, 2010

Roll Call Vote:	Del Yonts	<u>yes</u>
	Joe Hackford	<u>yes</u>
	Lisette Kolar	<u>yes</u>
	Pat Bryan	<u>yes</u>
	Jason Mahaney	<u>yes</u>
	Dan Faden	<u>yes</u>
	Cathy DeMott	<u>yes</u>