

ORDINANCE NO. 469

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, AMENDING ORANGE CITY CODE APPENDIX A, THE CITY'S LAND DEVELOPMENT CODE, AS ADOPTED BY ORDINANCE NO. 157; AMENDING CHAPTER 2 DEFINITIONS, CHAPTER 8 ZONING REGULATIONS AND SECTION 8.6.1 SCHEDULE OF ZONING DISTRICTS PERMITTED AND CONDITIONAL USES; PROVIDING FOR AN ADDITIONAL PERMITTED PRINCIPAL USE IN THE I-1 AND I-2 INDUSTRIAL ZONING DISTRICT; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on August 12, 2003 the City Council of the City of Orange City adopted Appendix A, the City's Land Development Code, via Ordinance No. 157, thereby establishing a unified code to implement the comprehensive plan and establish a development review process, setting forth regulations and procedures governing the use and development of land for the purpose of protecting the health, safety, and general welfare of the citizens of the City of Orange City, to the end of improving the overall quality of life within the community; and

WHEREAS, the City has seen an increase in the number of individuals or entities interested in opening "pain clinics" and "pain management clinics" hereinafter "pain clinics" in and around the City; and

WHEREAS, the U.S. Department of health and Human Services has released data showing prescription drug deaths are now the fourth leading cause of death in the United States, after heart disease, cancer and stroke; and

WHEREAS, in the State of Florida in 2006 there were 2,780 lethal dose reports of prescription drugs, in 2007 there were 3,317 lethal dose reports of prescription drugs, in 2008 there were 3,750 lethal dose reports of prescription drugs and in 2008 an additional 6,286 reports of non-lethal prescription drugs detected in deceased persons that may have been found in combination with other substances to be lethal; and

WHEREAS, under the home rule authority, the City can pass additional legislation to further regulate pain clinics as long as these additional regulations are not preempted in the law and are not inconsistent with statutory provisions; and

WHEREAS, the City Council finds it is in the best interest of the citizens of the City of Orange City to minimize and control the adverse effects of pain management clinics and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values by adopting appropriate regulations regulating thereto; and

WHEREAS, The City Council deems it in the best interest of the City to enact an ordinance regulating pain management clinics; and

WHEREAS, the City Council of the City of Orange City deems it in the best interest of the City to amend Chapter 2 Definitions, Chapter 8 Zoning Regulations, Section 8.6.1 Schedule of Zoning District Permitted and Conditional Uses to create a new permitted use in the I-1 and I-2 Zoning District; and

WHEREAS, on November 2, 2011, the local planning agency, being the Planning Commission of the City of Orange City, reviewed the requested amendment to the Land Development Code and recommended these changes to the City Council; and

WHEREAS, all applicable notice requirements of Section 166.041(3)(c)(2), Florida Statutes, have been complied with; and

WHEREAS, the City Council of the City of Orange City finds the requested amendment to be consistent with the provisions of the Comprehensive Plan of the City of Orange City, and in the overall best interest of the public health, safety and welfare;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA, AS FOLLOWS:

SECTION ONE: Repeal of Moratorium Ordinance The moratorium ordinance against pain management clinics implemented by Ordinance No. 435 and 458, are hereby repealed.

SECTION TWO: Chapter 3, Chapter 8, Section 8.6.1 of the City's Land Development Code is hereby amended as shown in Attachment A, attached hereto and incorporated herein with full force and effect.

SECTION THREE: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION FOUR: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion of application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION FOUR: EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading this 15th day of November, 2011.

Tom Abraham	<u>yes</u>	Anthony Pupello	<u>yes</u>
Gary Blair	<u>yes</u>	Ronald L. Saylor	<u>yes</u>
Bill Crippen, Vice Mayor	<u>yes</u>	Michael G. Wright	<u>yes</u>
Tom Laputka, Mayor	<u>yes</u>		

ROLL CALL VOTE AS FOLLOWS:

Second Reading this 13th day of December, 2011.

Tom Abraham	<u>yes</u>	Anthony Pupello	<u>yes</u>
Gary Blair	<u>yes</u>	Ronald L. Saylor	<u>yes</u>
Bill Crippen, Vice Mayor	<u>yes</u>	Michael G. Wright	<u>yes</u>
Tom Laputka, Mayor	<u>yes</u>		

PASSED and ADOPTED this 13th day of December, 2011.

ATTEST:

AUTHENTICATED:

Deborah J. Renner
Deborah J. Renner, CMC, City Clerk

Tom Laputka
Tom Laputka, Mayor

Approved as to form and legal sufficiency:

W.E. Reischmann
W.E. Reischmann, City Attorney

ATTACHMENT "A"

Chapter 2 Definitions

2.2 Specific Terms Defined

Pain Management Clinic : Any publicly or privately owned facility as defined by Florida Statutes 458.3265:

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.

Exceptions, There is a affirmative defense that a business is not a Pain Management Clinic if it has at least one of the following characteristics:

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 exceed 50 million dollars;
4. Owned or operated by a governmental entity for the sole purpose of serving that governmental entity.

Chapter 8 Zoning Regulations

Regulation of pain management clinics

- a) Pain Management Clinics shall be allowed only in the I-1 and I-2, Industrial Zone, and shall be prohibited as home occupations.
- b) Pain Management Clinics shall be subject to the following regulations and the physician designated 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 the City and shall prominently display in a public area near its main entrance copies of; state licenses, county licenses city licenses, and Business Tax Receipt, and the name of the owner and designated physician responsible for compliance with state, county and city law.

2. **Controlled substances.** The on-site sale, provision, or dispensing of controlled substances at a Pain Management Clinic shall be prohibited except as is specifically set forth in applicable federal or state law.
3. **Minimum floor area.** A Pain Management Clinic shall have a total leasable floor area not less than five thousand (5,000) square feet.
4. **Parking.** Any parking demand created by a Pain Management Clinic shall not exceed the parking spaces located or allocated on site, as required by the City's parking regulations. An applicant shall be required to demonstrate to the appropriate City staff that on-site traffic and parking at 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 other existing Pain Management clinics in Florida. The source of any such information shall be provided to the City for purposes of verification. City staff shall be required to verify the information contained in the traffic and parking study with the appropriate officials of the local government where the comparable information is derived. The owner of the Pain Management Clinic shall be responsible for ensuring that there is no queuing of vehicles in the public right-of-way.
5. **Alcoholic Beverages.** Alcoholic beverages shall be prohibited from being consumed or served on the premises, including in the parking areas, sidewalks, or adjacent right-of-way.
6. **No Loitering.** The Pain Management Clinic shall post on at least three sides of the building stating that no loitering is allowed on the property, and shall conduct an inspection at least once every ninety (90) minutes to ensure that there is no loitering.
7. **Separation Distances.** A Pain Management Clinic and a Pharmacy shall not co-locate on the same property. Furthermore, a Pain Management Clinic shall not operate within one thousand (1,000) feet of any pharmacy, school, as the term defined in sections 1002.01 or 1003.01, Florida Statutes, as it may be amended, day care center or home, or religious institution. Distance requirements shall be documented by the applicant and submitted to the Development Services Department with the application. All distance requirements pertaining to Pain Management Clinics shall be measured from the nearest point of the existing use to the nearest point of the proposed use.

8. **Operating Hours.** A Pain Management Clinic may operate only Monday through Friday and only during the hours of 8:00 a.m. to 7:00 p.m.

9. **Personnel Records.** A Pain Management Clinic shall maintain personnel records for all owners, operators, employees, and volunteers on site at the pain management clinic, and make those records available during inspection , and shall forward a copy to the City Manager or his or her designee, on a quarterly basis. Personnel records shall at a minimum, contain the following information about each person:
 1. Name and title;
 2. Current home address, telephone number, and date of birth;
 3. A list of all criminal convictions (if any), whether misdemeanor or felony;
 4. A copy of a current driver's license or a government issued photo identification; and
 5. A set of fingerprints.

10. **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 Orange City 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 Orange City Code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.

11. **Compliance with other laws.** A Pain Management Clinic shall at all times be in compliance with all federal, state, county laws and the regulations and the Orange City Code.

8.6.1 Schedule of Zoning District Permitted and Conditional Uses

Type of Use

P – Permitted Use except MX-2 zoning district wherein all uses shall be approved as PUD rezoning

INDUSTRIAL USES

I-1 and I-2

	R	R-1	R-2	R-3	MH-1	OT	MX-1	MX-2	CG-1	CG-2	I-1	I-2	PUD
<u>Pain Management Clinic</u>											<u>P</u>	<u>P</u>	