

BOARD OF COUNTY COMMISSIONERS

DATE: September 23, 2014

AGENDA ITEM NO. 36

Consent Agenda ☐

Regular Agenda ☐

Public Hearing ☒

 **County Administrator's Signature:**

Subject:

Public Hearing for a Proposed Amendment to Chapter 86 of the Pinellas County Code Regarding High Prescribing Health Clinics.

Department:

Safety and Emergency Services

Staff Member Responsible:

Bruce Moeller, Executive Director

Recommended Action:

I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS (BOARD) HEAR PUBLIC INPUT AND ADOPT THE PROPOSED ORDINANCE AMENDING CHAPTER 86 OF THE PINELLAS COUNTY CODE REGARDING HIGH PRESCRIBING HEALTH CLINICS.

Summary Explanation/Background:

The purpose of this request to hear public input for a proposed amendment to Chapter 86 of the Pinellas County Code pertaining to High Prescribing Health Clinics. As no action was taken by the State during the 2014 session and local concerns persist, this ordinance provides for a continuation of the moratorium against high prescribing clinics until sixty (60) days after the close of the 2015 Legislative Session to allow previous measures the time to reach a desired level of effect and to provide the State with time to pass effective regulatory strategies. This ordinance also includes recommendations which change provisions related to regulatory program administration, removing duplicative reporting requirements, enhancing security of all prescription formats and enhancing opportunities for these clinics to come into compliance prior to the issuance of a suspension. All territory within the legal boundaries of the county, including all incorporated and unincorporated areas, shall be embraced by the provisions of this article.

History of this proposed ordinance in reverse chronological order is as follows:

During 2013, Pinellas County continued to see the effects of drug related impacts within the community. Prescription drug related deaths decreased from the previous year total of 175 to 149. Additionally, the Prescription Drug Advisory Board (PDAB) has continued concerns over high prescribing activity and recommended continuing the moratorium for one additional year. The PDAB will continue to review and monitor local trends, impacts and review regulatory processes.

On July 9, 2013 the Board extended the moratorium and removed the provision which allowed a 30 day time window for new clinics to apply for a permit.

On May 8, 2012 the Board amended this ordinance to adjust the minimum prescribing requirement (more than 20 in any single day) as a registration requirement. The Ordinance was passed by the Board in anticipation of further State efforts during the 2013 Legislative Session.

In 2012, Pinellas County saw continued progress through various collaborative efforts, including effective enforcement strategies by the Sheriff's Office and local law enforcement, local regulation, education, and sporadic use of the statewide prescription drug monitoring program database (PDMP). Noting a key success, prescription drug related deaths had decreased by 29.7% from 249 in 2010 to 175 in 2012.

On November 8, 2011, the Board amended this ordinance to include a minimum prescription requirement (more than 34 in any single day) as a registration requirement, a change in name from Pain Management to High Prescribing Health Clinics, a reduction in registration fees, and recommended the institution of some standards of care by High Prescribing Health Clinics. The Ordinance was passed by the Board in anticipation of further State efforts during the 2012 Legislative Session.

On May 4, 2010, the Board approved Ordinance 10-26 setting a moratorium on pain management clinics operating in Pinellas County. This moratorium also included registration provisions providing the County with information regarding the number of pain management clinics in the community and set basic standards to operate a pain management clinic. This ordinance was enacted with the intent of being applicable until State efforts adequately address our local concerns. On September 28, 2010, the Board amended this ordinance to require additional registration information and included a fee in order to allow the County to recoup the costs of administering the mandates of the ordinance.

Fiscal Impact/Cost/Revenue Summary:

The cost of Administering this ordinance will be recovered through permit and application fees and is estimated to generate \$40,250.

Exhibits/Attachments Attached:

Underline Strike-Through Ordinance
Clean Ordinance

ORDINANCE NO. 14-__

AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING ARTICLE V OF CHAPTER 86 OF THE PINELLAS COUNTY CODE BY AMENDING SECTIONS 86-128; 86-133; 86-135; AND 86-139; AMENDING THE DEFINITION OF HIGH PRESCRIBING HEALTH CLINIC; AMENDING APPLICATION PROCESS; AMENDING THE MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A HIGH PRESCRIBING CLINIC; AMENDING OPERATIONS REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE COUNTY CODE; PROVIDING FOR OTHER MODIFICATIONS WHICH MAY ARISE FROM REVIEW OF THE ORDINANCE WITH RESPONSIBLE AUTHORITIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County Commission is aware of the continued pattern of illegal drug use and distribution associated with the prescribing patterns of certain health care clinics in Pinellas County; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with such prescribing is significant and could undermine the economic health of the County's development and redevelopment efforts; and

WHEREAS, the prevalence of prescription drug abuse continues to be a serious problem within Pinellas County causing 172 deaths in 2013; and

WHEREAS, Pinellas County has seen 273 youth sheltered due to prescription medication abuse during 2013; and

WHEREAS, Pinellas County had 140 drug addicted newborns in 2012; and

WHEREAS, measures adopted by the State of Florida continue to move forward with uncertain timing and impact; and

WHEREAS, Pinellas County seeks to establish strong communication and partnerships with the medical community; and

WHEREAS, registration under this ordinance does not suggest that the facility is operating outside of normal standards of medical care; and

WHEREAS, the Advisory Board has reviewed the ordinance prior to presentation to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners finds and declares a need to continue this temporary measure until such time that appropriate regulations can be adopted and made effective in connection with Prescription Pain Medication.

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

Section 1. Section 86-128 of the Pinellas County Code is amended to read as follows:

Sec. 86-128. Definitions.

The following words, terms and phrases, when used in this article, 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, which persists beyond the usual course of the disease of the injury that is the cause of the pain for more than 90 days after surgery.

Code enforcement officer means those employees designated as code enforcement officers pursuant to F.S. § 125.69.

Department shall mean the department designated by the county administrator through the board of county commissioners to administer the mandates of this article.

High prescribing health clinic means a privately owned health care clinic, facility or office which:

- (1) Advertises in any medium for any type of pain management services; or
- (2) Employs a physician who is 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 or who issues more than 20 prescriptions of CII and CIII controlled substances for treatment of pain in a single day; or
- (3) Prescribes more than 20 prescriptions of CII and CIII controlled substance medications for treatment of pain in a single day and is registered with the Florida Department of Health pursuant to F.S. § 458.309 or § 459.005, or any successor state law; or
- (4) Is otherwise registered with the state as a pain management clinic.

Permit shall mean a certificate issued by Pinellas County acknowledging the submission and accurate completion of the high prescribing health clinic registration

forms required to be completed in order to conduct business in Pinellas County as a high prescribing health clinic.

Section 2. Section 86-133(a)(5) of the Pinellas County Code is amended to read as follows:

Sec. 86-133(a).

- (5) Information provided in the application shall be updated within ten days of any new person becoming associated with the high prescribing health clinic changes to the application associated with the high prescribing health clinic.

Section 3. Section 86-135(a) of the Pinellas County Code is amended to read as follows:

Section 86-135.

- (a) It is the legislative determination of the county commission that the moratorium on submission of applications for issuance of permits for high prescribing health clinics as to any property located in whole or part within Pinellas County be maintained pending further review by the board of county commissioners no later than 60 days after the close of the 20142015 Legislative Session.

Section 4. Section 86-139(b) of the Pinellas County Code is amended to read as follows:

Section 86-139.

- (b) A permit shall be issued to the person(s) deemed the permittee(s) for the particular location provided for in the application and shall ~~not~~ be transferable upon approval of a new application in any manner either to another person or for another location.

Section 5. Section 86-139(c)(6) of the Pinellas County Code is amended to read as follows:

Sec. 86-139(c).

- (6) The facility shall secure prescription pads, electronic pads or any format where a prescription is created, so that only authorized persons may access them. All prescription pads, electronic pads or any format where a prescription is created, shall contain the name of the high prescribing health clinic and the high prescribing health clinic permit number.

Section 6. Section 86-139(c)(7) of the Pinellas County Code is repealed.

Section 7. Section 86-139(c)(11) of the Pinellas County Code is repealed.

Section 8. Section 86-139(d)(4) of the Pinellas County Code is repealed.

Section 9. Section 86-139(e)(1) of the Pinellas County Code is amended to read as follows:

Sec. 86-139(e).

(1) ATwo convictions of violations of the Pinellas County high prescribing health clinic ordinance within a two year period beginning the date of the first conviction, or commission of an incurable violation created under this article shall constitute grounds for a suspension of the permit holder's high prescribing health clinic permit.

Section 10. Severability.

If any section, subsection, sentence, clause or phrase of this article, amendment or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentence, clause or phrase and application shall not be affected thereby.

Section 11. Area Embraced.

This article shall be in effect in the incorporated and unincorporated areas of Pinellas County.

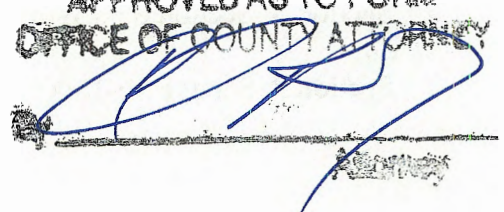
Section 12. Codification.

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

Section 13. Filing Of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes (2014), a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners, and shall become effective upon filing with the Department of State.

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY



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Pinellas County Justice & Consumer Services

High Prescribing Health Clinics

What led to the moratorium and original “pain management” ordinance?



Total number of deaths caused by prescription/prescription & illicit drugs by year:

- 2009 – **218**
- 2010 – **249** (Moratorium Declared)
- 2011 – **217**
- 2012 – **175**
- 2013 – **149**

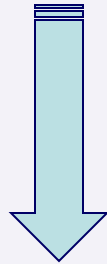


What led to the moratorium and original “pain management” ordinance?



Total number of clinics:

- 2010 — Approximately 60+ “pain clinics” identified in Pinellas



- Changing business practices
- “Bad apples” eliminated
- Unmet need addressed

- 2014 — 23 licensed High Prescribing or “pain clinics” in Pinellas

What does the current ordinance do to ensure only “legitimate” clinics are in operation?

- No clinic may be owned by or have contractual or employment relationship with a physician:
 - Whose DEA number has ever been revoked
 - Whose license has been denied, revoked or encumbered due to final disciplinary action by the state
 - Who has been convicted of or plead guilty within last five years for a felony for receipt of illicit and diverted drugs



Pain Management vs. High Prescribing Health Clinic

- On November 8, 2011 the Board amended this ordinance to include a minimum prescription requirement (currently more than 20 in a single day) as a registration requirement to close possible loop holes



Who is exempted currently?



- Hospitals
- Clinic, facility, or office in which a majority of the patients primarily receive surgical services
- Clinic, facility, or office treating terminal illnesses or cancer
- Nursing homes
- Hospice
- Clinic owned by a publicly held corporation with most recent fiscal quarter total assets exceeding \$50,000,000.00
- Clinic owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3)

Substantial changes currently being considered



86-133(a)(5)

- All information in an application shall now be updated within 10 days of any changes

86-135(a)

- Updated to reflect that the moratorium shall again be reviewed no later than 60 days after the close of the 2015 legislative session

Continued...

Substantial changes currently being considered



86-139(b)

- A permit shall now be transferable

86-139(e)(1)

- Two convictions of the high prescribing health clinic ordinance shall now constitute grounds for a suspension

Continued...

Substantial changes currently being considered



REPEALED SECTIONS:

86-139(c)(7)

- Clinics are no longer required to provide a semi-annual update

86-139(c)(11)

- Clinics will no longer include a copy of the patient advisory report in patient's file

86-139(d)(4)

- Failure to update the clinic application is reclassified as a violation subject to remedy

Looking ahead...

- Monitor Florida legislative actions
- Coordinate with law enforcement/regulatory agencies to identify, plan and respond to emerging trends
- Continue participation with Prescription Drug Task Force
- Plan exit strategy for moratorium expiration

