



AGENDA ITEM#: 6

MEMORANDUM

TO: Metropolitan Planning Commission

FROM: Mark Donaldson, Executive Director

DATE: October 13, 2011

SUBJECT: Request of MPC by Knox County Commission to study and make recommendations regarding amendments to the Knox County zoning ordinance to address the location and operation of pain management clinics
10-B-11-OA

REQUEST

MPC has been requested by Knox County Commission to study and make recommendations regarding amendments to the Knox County zoning ordinance to address the location and operation of pain management clinics in commercial areas of unincorporated Knox County.

BACKGROUND

This request comes to MPC following the recent activity of "pain management" clinics in various zone districts throughout Knox County. The current regulations within the Knox County Zoning Ordinance do not acknowledge a "pain management clinic" as a permitted use or as a use permitted on review.

In the latest legislative session, the Tennessee Assembly enacted a bill defining and regulating pain management clinics in the state; and in the southeast United States, several local governments have begun to address this rapidly growing activity.

ANALYSIS

The primary purpose of the Knox County zoning ordinance is to provide for the orderly distribution of land uses and regulate the placement, height, and bulk of buildings on land. Pain management clinics are currently not mentioned in the zoning ordinance.

The zoning ordinance currently permits the location and operation of methadone clinics, a use comparable to pain management clinics in operation, area and intensity, as a use permitted on review within the OA (Office Park) and OB (Office, Medical, and Related Services) zone districts, subject to approval by the planning commission in conformance with state requirements. This provides a model for addressing pain management clinics.

STRATEGY

To adequately address pain management clinics within the Knox County Zoning Ordinance, terms must be defined. In this case, a definition for medical, dental and chiropractic offices/clinics is also needed to clearly differentiate these uses from pain management clinics. In addition to proper definitions, the uses must be listed in specific zone districts, and requirements may be added to the supplemental regulations for consideration as a use permitted on review.

RECOMMENDATION

Staff recommends that the planning commission recommend to Knox County Commission that amendments to the Knox County Zoning Ordinance be made as shown in Exhibit A:

- 1) add definitions for pain management clinic, as well as medical, dental and/or chiropractic office/clinic;
- 2) add "pain management clinic" as a use permitted on review within the OA (Office Park) and OB (Office, Medical, and Related Services) zone districts; and
- 3) add as section 4.82 of the Supplemental Regulations: Requirements for the location and operation of pain management clinics as uses permitted on review.

ATTACHMENTS

- Public Chapter No. 340 of the State of Tennessee, as revised June 16, 2011
- Exhibit A, proposed amendments to the zoning ordinance to address pain management clinics



State of Tennessee

PUBLIC CHAPTER NO. 340

(Revised – June 16, 2011)

SENATE BILL NO. 1258

By Yager, Tracy, Bell, Southerland, Campfield, Henry, Tate, Overbey, Burks, Johnson

Substituted for: House Bill No. 1040

By Ramsey, Campbell, Powers, Hensley, Evans, Dunn, Harry Brooks, Faison, Todd, Don Miller, Butt, Montgomery, Shipley, Weaver, Maggart, Halford, Haynes, Hall, Favors, Brown

AN ACT to amend Tennessee Code Annotated, Title 63, relative to the regulation of pain management clinics

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, is amended by adding a new part as follows:

63-1-301. For purposes of this part, unless the context requires otherwise:

(1) "Advanced practice nurse" means any person licensed under Title 63, Chapter 7, who meets the requirements of § 63-7-126

(2) "Department" means the Department of Health

(3) "Medical doctor" means any person licensed under Title 63, Chapter 6.

(4) "Osteopathic physician" means any person licensed under Title 63, Chapter 9.

(5) "Pain management clinic" means a privately-owned facility in which a medical doctor, an osteopathic physician, an advanced practice nurse, and/or a physician assistant provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepine, barbiturates, or carisoprodol, but not including suboxone, for more than ninety (90) days in a twelve-month period; and

(6) "Physician assistant" means any person licensed under Title 63, Chapter 19

63-1-302. This part does not apply to:

(1) A medical or dental school, an osteopathic medical school, a nursing school, a physician assistant program or an outpatient clinic associated with any of the foregoing schools or programs.

(2) A hospital as defined in § 68-11-201, including any outpatient facility or clinic of a hospital;

(3) Hospice services as defined in § 68-11-201;

(4) A nursing home as defined in § 68-11-201;

(5) A facility maintained or operated by this state; or

(6) A hospital or clinic maintained or operated by the federal government

63-1-303.

(a) Each licensed healthcare practitioner who provides services at a pain management clinic shall continue to be regulated only by the board which has issued a license to that practitioner

(b) On or before October 1, 2011, the Commissioner of Health, in consultation with the board of medical examiners, the board of osteopathic examination, the board of nursing, and the committee on physician assistants, shall promulgate rules necessary to implement this part, in accordance with the Uniform Administrative Procedures Act compiled in Title 4, Chapter 5.

(c) The rules adopted pursuant to subsection (b) may address the following topics, among others:

- (1) The operation of the clinic;
- (2) Personnel requirements for the clinic;
- (3) Training requirements for clinic providers who are regulated by that board;
- (4) Patient records;
- (5) Standards to ensure quality of patient care;
- (6) Infection control;
- (7) Health and safety requirements;
- (8) Certificate application and renewal procedures and requirements;
- (9) Data collection and reporting requirements;
- (10) Inspections and complaint investigations; and
- (11) Patient billing procedures.

63-1-304. Each board shall have the authority to inspect a pain management clinic which utilizes the services of a practitioner licensed by that board. During such inspections, the authorized representatives of the board may inspect all necessary documents and medical records to ensure compliance with this part and all other applicable laws and rules.

63-1-305. Each board shall have the authority to investigate a complaint alleging a violation of this part, or a rule adopted under this part, by a pain management clinic utilizing the services of a healthcare practitioner licensed by that board. Each board shall also have the authority to investigate a complaint alleging that a facility utilizing the services of a healthcare practitioner licensed by that board is not properly certified by the department as required by this part.

63-1-306.

(a) A pain management clinic, as defined in this part, must have a medical director who is a physician that practices in this state under an unrestricted and unencumbered license issued pursuant to § 63-6-201 or § 63-9-104.

(b) In the event that the medical director, for whatever reason, no longer meets the requirements of this part, the pain management clinic must notify the department, within ten (10) business days, of the identity of another physician who meets the requirements of this part and will act as medical director. A change of majority ownership of a certified pain management clinic requires the submission of a new application for a certificate. Failure to notify the department within ten (10) business days may be the basis for a summary suspension of the clinic's certification.

(c) Every pain management clinic shall submit an application to the department, on a form prescribed by the department, for a certificate to operate the clinic.

(d) Each clinic location shall be certified separately regardless of whether the clinic is operated under the same business name, ownership or management as another clinic.

(e) The department shall issue a certificate if the department finds that the pain management clinic meets the requirements of this part and that the fee required by the department has been paid.

(f)(1) If the department finds that a pain management clinic which was issued a certificate no longer meets any requirement of this part, including, but not limited to, any violation of any rule promulgated by the department pursuant to this part, the department may impose lawful disciplinary action against the pain management clinic, including but not limited to, the revocation or suspension of its certificate, and the imposition of a civil penalty of up to one thousand dollars (\$1,000) per day for each day of continued violation. The pain management clinic shall be entitled to a hearing pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. Further, the department has the discretion to lift the suspension of a certificate when the clinic demonstrates compliance to the department.

(2) Any board which assesses any discipline or penalty against a provider that it licenses for a violation of rules promulgated under this part shall inform the department of any penalty or discipline imposed on such a provider for a violation of rules promulgated under this part within thirty (30) days of imposing the discipline or penalty, and the department may consider such discipline or penalty as a basis for disciplinary action against the pain management clinic pursuant to this subsection (f).

(g) The clinic shall post the certificate in a conspicuous location so as to be clearly visible to patients.

(h) The department is authorized to charge a fee for the issuance of a certificate

(i) The department and each board identified in § 63-1-303(b) shall post on its Web site an announcement of the requirement that a pain management clinic obtain a certificate from the department, and each board identified in § 63-1-303(b) shall include information about such requirement in a routine communication sent by each board to its licensees

(j) A pain management clinic operating on or before the effective date of this act may continue to operate as long as an application for certification is timely filed within thirty (30) days after the department has published the application form

(k) The department shall have the authority to adopt rules, including emergency rules if deemed necessary, to implement the provisions of this part for which the department has responsibility.

63-1-307

(a) A certificate issued under this part expires on the second anniversary of the date it is issued

(b) The department may grant to a pain management clinic a ninety-day grace period from the expiration date of its certificate to renew the certificate

(c) No pain management clinic whose certificate has expired may continue to operate or provide pain management services following the expiration of the grace period

63-1-308

(a) A pain management clinic may apply to renew its certificate by:

(1) Submitting a renewal application to the department on the form and in a time frame prescribed by the department; and

(2) Complying with any other requirements of the department.

(b) If a certificate is not renewed before the expiration of the grace period, the clinic must reapply for a new certificate to operate the clinic and is not authorized to operate while such new certificate application is pending

63-1-309

(a)(1) In the application for a certificate or within ten (10) days of the occurrence of any of the events listed in (A) – (C) below, a pain management clinic shall disclose whether any person who owns, co-owns or operates or

otherwise provides services in the clinic, an employee of the clinic, or a person with whom the clinic contracts for services:

(A) Has ever been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply or sell a controlled substance;

(B) Has ever held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply or sell a controlled substance that has been restricted; or

(C) Has ever been subject to disciplinary action by any licensing entity for conduct that was the result of inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance.

(2) The department may deny a certificate or renewal of a certificate to a pain management clinic under any of the circumstances listed in subdivision (a)(1)

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) An offense that constitutes a felony; or

(2) An offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined in § 39-17-402.

(c) If any practitioner providing services at a pain management clinic dispenses or prescribes more than a seventy-two hour dose of controlled substances for the treatment of chronic nonmalignant pain, the practitioner must document in the patient's record the reason for prescribing or dispensing that quantity

(d) A medical director shall be on-site at least twenty percent (20%) of the clinic's weekly total number of operating hours

63-1-310

(a) A pain management clinic may accept only a check, credit card or money order in payment for services provided at the clinic, except as provided in § 63-1-310(b).

(b) A payment may be made in cash for a co-pay, coinsurance or deductible when the remainder of the charge for the services will be submitted to the patient's insurance plan for reimbursement

63-1-311.

(a) A violation of this part or a rule adopted under this part, is grounds for disciplinary action against a practitioner providing services at a pain management clinic certified under this part by the board which licensed that practitioner.


(b) A practitioner who provides pain management services at an uncertified pain management clinic is subject to an administrative penalty of one thousand dollars (\$1,000) per day, imposed by the board which licensed that practitioner, in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5. Before such a penalty may be assessed by the board, the board shall give at least thirty (30) days notice to the practitioner of the alleged violation of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable

SECTION 3. For purposes of promulgating rules, this act shall take effect upon becoming a law the public welfare requiring it. For all other purposes this act shall take effect on January 1 2012.

SENATE BILL NO. 1258

PASSED: May 19, 2011



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 16 day of June 2011



BILL HASLAM, GOVERNOR



RON RAMSEY
SPEAKER OF THE SENATE

Public Chapter No. 340
(Revised – June 16, 2011)

M. SCOTT SLOAN
CHIEF ENGROSSING CLERK

Senate Chamber
State of Tennessee

OFFICE OF THE CHIEF ENGROSSING CLERK

State Capitol, G-1
Tennessee General Assembly
Nashville, Tennessee 37243
(615) 741-1306

June 16, 2011

The Honorable Tre Hargett
Secretary of State
Nashville, Tennessee 37243

Dear Mr. Secretary of State:

An engrossing error has been discovered in Senate Bill No. 1258/House Bill No. 1040 (assigned Public Chapter No. 340). The bill passed the Senate on April 21, 2011, and passed the House as amended May 9, 2011. The Senate concurred in the House amendments on May 19, 2011.

The Speakers of the Senate and House signed the bill and it was transmitted to the Governor on May 20, 2011. The Governor signed Senate Bill No. 1258/House Bill No. 1040 on May 30, 2011.

Attached is a corrected version of Senate Bill No. 1258/House Bill No. 1040. It was signed by the Speaker of the Senate and the Speaker of the House on June 16, 2011.

The corrected version was transmitted to the Governor and signed by him on June 16, 2011.

Please destroy the previous copies of Senate Bill No. 1258/House Bill No. 1040 received by your office.

With best wishes, I remain

Yours truly,

M. Scott Sloan
Chief Engrossing Clerk

AMEND ZONING ORDINANCE TO ADD DEFINITIONS:

Pain management clinic (as found in Tennessee Code Annotated at § 63-1-301) – means a privately-owned facility in which a medical doctor, an osteopathic physician, an advanced practice nurse, and/or a physician assistant provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepine, barbiturates, or carisoprodal, but not including suboxone, for more than ninety (90) days in a twelve-month period. A pain management clinic does not include:

- A medical or dental school, an osteopathic medical school, a nursing school, a physician assistant program or an outpatient clinic associated with any of the foregoing schools or programs;
- A hospital as defined in TCA § 68-11-201, including any outpatient facility or clinic of a hospital;
- Hospice services as defined in TCA § 68-11-201;
- A nursing home as defined in TCA § 68-11-201;
- A facility maintained or operated by the state government; or
- A hospital or clinic maintained or operated by the federal government.

Medical, dental, or chiropractic office/clinic – means a facility for the examination and treatment of ill or afflicted human outpatients, provided, however, that the patients are not kept overnight except under emergency conditions.

AMEND ZONING ORDINANCE TO ADD “PAIN MANAGEMENT CLINIC” AS A USE-ON-REVIEW IN SELECTED ZONE DISTRICTS:

Article 5, Section 5.40
Office Park Zone (OA)

5.40.03

E. Pain Management Clinic

Article 5, Section 5.41
Office, Medical and Related Services Zone (OB)

5.41.03

F. Pain Management Clinic

AMEND ZONING ORDINANCE TO ADD: REQUIREMENTS FOR USE-ON-REVIEW AT ARTICLE 4, SECTION 4.82:

4.82 REQUIREMENTS FOR THE LOCATION AND OPERATION OF PAIN MANAGEMENT CLINICS AS USES PERMITTED ON REVIEW

This section prescribes the locations and conditions under which pain management clinics may be operated as uses permitted on review in specified zone districts.

4.82.1.1 Minimum Requirements:

- A. Definition. For the purposes of this ordinance, a pain management clinic means a privately-owned facility in compliance with the requirements of TCA § 63-1-302 through § 63-1-311 in which a medical doctor, an osteopathic physician, an advanced practice nurse, and/or a physician assistant provides pain management services to patients, a majority of whom are issued a prescription for, or are dispensed, opioids, benzodiazepine, barbiturates, or carisoprodol, but not including suboxone, for more than ninety (90) days in a twelve-month period.
- B. This section does not apply to the following facilities as described at TCA § 63-1-302:
 - 1. A medical or dental school, an osteopathic medical school, a physician assistant program or an outpatient clinic associated with any of the foregoing schools or programs;
 - 2. A hospital as defined in TCA § 68-11-201, including any outpatient facility or clinic of a hospital;
 - 3. Hospice services as defined in TCA § 68-11-201;
 - 4. A nursing home as defined in TCA § 68-11-201;
 - 5. A facility maintained or operated by the State of Tennessee; or
 - 6. A hospital or clinic maintained or operated by the federal government.
- C. Certification. Said facility shall maintain in good standing a certificate in compliance with TCA § 63-1-306 through § 63-1-309.
- D. Receipts. A pain management clinic, in conformity with TCA § 63-1-310 may accept only a check, credit card or money order in payment for services provided at the clinic, except that a payment may be made in cash for a co-pay, coinsurance or deductible when the remainder of the charge

for services is submitted to the patient's insurance plan for reimbursement.

- E. Off-Street Parking and Vehicular Operation. Off-street parking shall be provided for the facility at a rate of five (5) spaces per thousand square feet of clinic floor area and the clinic shall assure that all cuing of vehicles takes place on site and not in the public right-of-way.
- F. Location. The clinic shall not be located within one thousand (1,000) feet, as measured from property line to property line, of any school, day care facility, park, church, residential use, pharmacy or similar facility that sells or dispenses either prescription drugs or over the counter drugs.
- G. Access. The clinic shall be located on property that is adjacent to and has access to an arterial street as shown on the Knoxville-Knox County Major Road Plan.
- H. In reviewing each application, the Planning Commission may establish additional requirements or conditions of approval to further reduce the impact such facility may have on surrounding properties.