

ITEM 4.B

Public Hearing — First Reading — Proposed Ordinance # 26-19 — Requesting the Repeal of the Pain Management Establishments and Pharmacies Ordinance

AN ORDINANCE REPEALING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 10, BUSINESSES AND BUSINESS REGULATIONS, ARTICLE VIII, PAIN MANAGEMENT ESTABLISHMENTS AND PHARMACIES, DIVISIONS 1 THROUGH 4, SECTIONS 10-406 THROUGH 10-407; AND PROVIDING AN EFFECTIVE DATE.

Request

Request approval to repeal Chapter 10, Businesses and Business Regulations, Article VIII, Pain Management Establishments and Pharmacies, Divisions 1 through 4, Sections 10-406 to 10-407, which removes the ordinance governing operational guidelines for Pain Management Establishments and Pharmacies.

Explanation

Chapter 10, Businesses and Business Regulations, Article VIII, Pain Management Establishments and Pharmacies, Divisions 1 through 4, Sections 10-406 through 10-467, outlines the operational procedures and reporting requirements for specified pain management businesses operating within the City. After the ordinance's adoption, the State of Florida established similar reporting requirements for such businesses, rendering the ordinance's reporting rules redundant and obsolete. After consultation with Police Department Staff, Legal, and Developmental Services, City Staff has determined that the ordinance is no longer necessary.

Recommendation

Approve the repeal of Chapter 10, Businesses and Business Regulations, Article VIII, Pain Management Establishments and Pharmacies, Divisions 1 through 4, Sections 10-406 through 10-407.

REQUESTED CITY COMMISSION ACTION:

Approve

Department: Police

Presenter: Charles Broadway

Attachment(s):

1. Proposed Ordinance No 26-19
2. Ordinance Repeal 26-19 Business Impact Estimate
3. Affidavit of Publication - COK ORD 26-19

PROPOSED ORDINANCE NO. 26-19
ORDINANCE NO. _____

**AN ORDINANCE REPEALING THE CODE OF
ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA,
CHAPTER 10, BUSINESSES AND BUSINESS
REGULATIONS, ARTICLE VIII, PAIN MANAGEMENT
ESTABLISHMENTS AND PHARMACIES, DIVISIONS 1
THROUGH 4, SECTIONS 10-406 THROUGH 10-467; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City previously adopted regulations pertaining to Pain Management Establishments and Pharmacies for the purpose of monitoring and regulating activities related to the prescribing, dispensing, and distribution of controlled substances within the City; and

WHEREAS, the State of Florida maintains a comprehensive regulatory framework governing pain-management clinics, physicians, pharmacies, and controlled substances, which regulate the registration and operation of pain-management clinics; and

WHEREAS, the City Commission finds that the information required to be collected, reported, or maintained pursuant to the City's regulations concerning Pain Management Establishments and Pharmacies is substantially similar to information already collected, maintained, and monitored by the State of Florida pursuant to Chapters 458, 459, 465, and 893, Florida Statutes; and

WHEREAS, the City Commission desires to avoid duplicative reporting requirements by repealing provisions of the City Code that overlap with the State's comprehensive regulatory framework.

THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KISSIMMEE, FLORIDA IN LAWFUL SESSION ASSEMBLED AS FOLLOWS:

SECTION 1. Chapter 10, Article VIII, Division 1 through 3, Sections 10-406 through 10-467 of the Code of Ordinances of the City of Kissimmee, Florida, titled, Pain Management Establishments and Pharmacies, is hereby repealed:

For purposes of changes to the text of the Code of Ordinances as set forth below, underlined words indicate additions to existing text, and ~~stricken~~ words include deletions from existing text.

~~DIVISION 1. — GENERALLY~~

~~Sec. 10-406. — Findings.~~

(a) ~~Pursuant to article VIII, section 2 of the state constitution and F.S. ch. 166, the city is authorized and required to protect the public health, safety and welfare of its citizens and has the power~~

and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law.

- (b) The public health, safety and welfare is a legitimate public purpose recognized by the courts of the state.
- (c) The city commission has been made aware by law enforcement and news reports that a pattern of illegal prescription drug use, diversion and distribution of oxycodone, OxyContin and other Schedule II prescription narcotic drugs resulting in deaths associated with such abuse and criminal activity that have been associated with pain management clinics and pharmacies.
- (d) Many municipalities within central Florida have experienced an influx of pain management clinics.
- (e) The city commission has been made aware by law enforcement of the significant amount of Schedule II substances that are obtained from pain management clinics and pharmacies in the county and distributed out of the state.
- (f) The city commission finds it in the best interest of the citizens of the city to mitigate the negative effects of these businesses by adopting appropriate regulations relating thereto.
- (g) On May 3, 2011, the city commission approved Ordinance No. 2799 authorizing a moratorium on the issuance of business tax receipts for the operation of pain management clinics, in order to research the nature and scope of possible measures to mitigation and regulation of pain management clinics and pharmacies involved in the dispensing of prescription substances.
- (h) The state and federal laws have not done enough to curb the proliferation of pain management clinics and pharmacies that do not follow the medical standard of care.
- (i) Based on all of the foregoing, the city commission deems it necessary and in the best interest of the city to enact an ordinance regulating such businesses and further desires to extend the pain clinic and pharmacy moratoriums to coincide with the effective date of the ordinance from which this article is derived.

Sec. 10-407. -- Purpose and intent.

The purpose and intent of this article is to create a procedure for licensing for any pain management clinics or pharmacies that intend to prescribe or dispense or which are presently prescribing or dispensing any Schedule II substances, as defined herein.

Sec. 10-408. -- 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. In those cases wherein a term is not defined, its definition shall be as found in Black's Law Dictionary, latest edition, or in American Heritage College Dictionary, latest edition.

Operator means a person who engages or participates in any activity that is necessary to or that facilitates the operation of an establishment that is a pharmacy or pain management clinic.

Pain management clinic means a privately owned pain management clinic, facility, or office which advertises in any medium for any type of pain management services or engages a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and which is required to register pursuant to F.S. § 458.3265 or 459.0137, as amended. A physician that is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications for the treatment of pain shall also be defined as a

~~pain management clinic. The term "pain management clinic" shall not include any clinic or medical practitioner's office that is affiliated with a hospital, hospice or other facility for the treatment of the terminally ill in Osceola or Orange County, nor shall it include a pain management clinic or practice which is conducted within a facility licensed under F.S. ch. 395 or any successor statute.~~

~~*Pharmacy* means a facility, office, building, or other establishment which engages in the dispensing of prescription substances. An exempt pharmacy shall not be required to obtain a pain medication license.~~

~~*Schedule II* means a substance that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence and as defined in F.S. § 893.03, as amended from time to time. For the purposes of this article, the following substances are exempted from the definition of Schedule II substances and shall not be counted in the monthly or annual aggregate unit doses: Nabilone, Phenyclidine, 1-Phenylcyclohexylamine, 1-Piperidinocyclohexanecarbonitrile, Amobarbital, Amphetamine, Glutethimide, Methamphetamine, Methylphenidate, Pentobarbital, Phenmatrazine, Phenylacetone, and Secobarbital.~~

~~Sec. 10-409. Exempt pharmacy.~~

~~A facility, office, building, or other establishment that engages in the dispensing of prescription substances, and which meets one of the following criteria:~~

- ~~(1) The facility, office, or building is located in an establishment where physicians provide surgical services;~~
- ~~(2) The facility, office, or building is owned or leased by a publicly held corporation whose shares are traded on a national exchange and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50,000,000.00;~~
- ~~(3) The facility, office, or building is affiliated with an accredited medical school where training is provided for medical students, medical residents, or fellows;~~
- ~~(4) The facility, office, or building is owned by a corporate entity exempt from federal taxation under 26 USC 501(c)(3);~~
- ~~(5) The facility, office, or building is licensed as a facility pursuant to F.S. ch. 395;~~
- ~~(6) The facility, office, or building is owned or operated by a public agency;~~
- ~~(7) The facility, office, building, or pharmacist:~~
 - ~~a. Does not purchase, store or dispense more than an aggregate of 5,000 unit doses of Schedule II substances as defined herein on a monthly basis. The pharmacy may exceed the monthly aggregate by up to ten percent provided the pharmacy's annual aggregate of Schedule II substances does not exceed 60,000 unit doses;~~
 - ~~b. Has no principals, officers and/or pharmacists with criminal convictions under F.S. ch. 893 within the last ten years;~~
 - ~~c. Executes an agreement for pain medication license exemption in substantially the format as adopted by the city commission that will result in the revocation of the certificate of use and local business tax receipt and inability of the facility, office, building or pharmacist, or any successor entity or person, to apply for any certificate of use or local business tax receipt within the city for the next 24 months upon determination by the city manager or his designee based on the recommendation of the police chief of any violation of the agreement;~~
 - ~~d. Files a monthly affidavit by the seventh day of each month for the previous month with the police chief identifying the types and quantities of Schedule II substances as defined herein;~~

1. That were purchased during the reporting period;
 2. That were sold during the reporting period; and
 3. That were stored during the reporting period; and
- e. The owners and operators of the facility, office, or building have not had a pain medication license suspended, revoked, non-renewed or denied in the previous 24 months; or
- (8) The facility, office, building or pharmacist is located within a retail store that has a minimum of 40,000 square feet of retail and that maintains more than 20 locations within the state.

~~Secs. 10-410—10-429. Reserved.~~

~~DIVISION 2. PAIN MANAGEMENT LICENSING PROCEDURE~~^[5]

Footnotes:

~~—(5)—~~

State Law reference—Pain management clinics, F.S. §§ 458.3265, 459.0137.

~~Sec. 10-430. License required.~~

~~It shall be unlawful for any pain management clinic or pharmacy to prescribe or dispense any Schedule II controlled substance without first obtaining a pain medication license from the city.~~

~~Sec. 10-431. Pain medication licensing procedure.~~

~~Any pain management clinic or pharmacy holding a license duly granted by the state to prescribe or dispense Schedule II controlled substances may apply for a pain medication license. The applicant shall pay a fee for the review and processing of the application as set forth in [section 10-463](#). The application shall be processed using the procedures and criteria listed in this article. In the event that such an establishment is under contract for sale, the current owner and the potential future owner, under contract, must submit a joint application for a pain medication license. The fee for the issuance of the pain medication license shall be the same as for a new license and shall be paid prior to issuance of the license. A pain medication license granted to a duly licensed establishment shall allow the pain management clinic or pharmacy to lawfully prescribe and/or dispense Schedule II substances within the city. Pain medication licenses are hereby deemed to be a privilege granted by the city commission, and are declared to be and are regulatory in nature, and revocable pursuant to the procedures set forth in this article.~~

~~Sec. 10-432. Revocation of existing pain medication licenses and approvals, and establishment of pain medication licensing procedure.~~

~~The ability to prescribe and/or dispense Schedule II substances within the city is hereby declared to be and is a privilege subject to review and approval, suspension, termination, and the imposition of conditions as provided below, and no person may reasonably rely upon the granting of or the continuation of that privilege. Pain management clinics and pharmacies, as defined under [section 10-408](#), that do not fall under an exemption and that wish to prescribe or dispense Schedule II substances after July 1, 2012, including any pain management clinic or pharmacy to whom an authorization or approval for prescribing or dispensing has previously been granted by the city or which was not previously required to obtain any city approval, shall be required to make an application and receive approval for a pain medication license no later than July 1, 2012.~~

~~Secs. 10-433—10-462. Reserved.~~

~~DIVISION 3. PAIN MEDICATION LICENSING PROCEDURE~~

~~Sec. 10-463. Application; public notice; public hearing; determination.~~

~~(a) *Application.* One application per location for a pain medication license shall be submitted, on a form furnished by the city, to the city manager or his designee, along with a nonrefundable~~

application fee of \$500.00 per location. The amount of the application fee may be modified by resolution of the city commission.

- (b) *Public notice.* All owners of property located within 500 feet of the parcel for which a new pain medication license is requested shall be notified of the application. The letter of notification will set forth a description of the request and a date, time and place of the hearing before the city commission. Letters will be mailed by the city to said property owners by first class. The required notification shall be postmarked at least 15 days prior to the hearing date at which the application will be heard before the city commission. Staff is authorized to charge the applicant a reasonable fee for the city's cost of preparing and mailing notices.
- (c) *Public hearing.* The city commission, in accordance with the procedures of this article, shall conduct a public hearing on the application for a pain medication license, during which staff and the licensee may address the city commission.
- (d) *Determination.* The city commission shall approve, approve with conditions, or deny the request for a pain medication license in accordance with the procedures of this article.
 - (1) *Approval.* The city commission may approve an application for a pain medication license upon a determination that the subject application is consistent with the health, safety, and welfare of the city and pursuant to the criteria and conditions set forth in this section and [section 10-464](#).
 - (2) *Conditional approval.* The city commission may require, as a condition of the privilege of granting of a pain medication license, compliance with any reasonable condition deemed to be necessary to mitigate or eliminate the potential adverse effects of such dispensing and prescribing Schedule II substances, in addition to the conditions provided in [section 10-464](#). These conditions may include, without being limited to, provision by the owner or operator at his expense measures designed for security, crowd control, noise attenuation, crime prevention or reduction, and other similar protections designed to mitigate the effects of the operation of the pain management clinic or pharmacy.
 - (3) *Denial.* An application which is determined by the city commission to be inconsistent with the public health, safety, and welfare or the review criteria set forth herein, shall be denied. Any applicant who makes an application which is denied, after any appeal therefrom, shall be precluded from making another application for 24 months from the date of such denial of the application or conclusion of the appeal.

Sec. 10-464. -- Review criteria for pain medication licenses.

An application for a pain medication license shall be submitted to the city manager or his designee. The development review committee shall review the application, based on the criteria of this article and consistency of the application with the public health, safety, and welfare of the city, and shall make a recommendation to the city manager or his designee. The city manager or his designee shall prepare a report to the city commission recommending approval, approval with conditions, or denial, based upon the following criteria:

- (1) The amount and degree of law enforcement activities generated by the operation of any such establishment, by previous similar establishments in the same location or at any location involving any of the same owners or operators. Consideration will be given as to whether the calls are initiated by the pain medication license holder and what efforts have been taken to reduce unlawful activity at establishments owned or operated by the applicant;
- (2) A criminal background check of all owners or operators or any other party with a proprietary interest in such establishment shall be conducted in order to provide assurances that such

persons have no criminal convictions, including, but not limited to, convictions under F.S. ch. 893, within the last ten years;

- (3) ~~The adverse effects of prescribing, storing, and/or dispensing Schedule II substances shall not place an undue burden on the nearby properties in proximity to the establishment, especially with respect to patron activities and effects of noise, traffic, parking, and vehicular use; and~~
- (4) ~~The amount and degree of security measures in place, including, but not limited to, impact resistant glass, exterior lighting, security cameras, video recordings, alarm and panic system, Crime prevention through environmental design ("CPTED") standards, principals, and signage.~~

Sec. 10-465. -- Mandatory conditions for pain medication license.

All pain medication licenses shall require compliance with the following conditions:

- (1) During all hours of operation, the pain management clinic or pharmacy shall comply with the following conditions:
 - a. ~~Each pain management clinic or pharmacy shall be registered separately for each location within the city regardless of whether each clinic or pharmacy is operated under the same business name or management as another clinic or pharmacy;~~
 - b. ~~Each application for a pain management clinic or pharmacy shall disclose each owner and operator of such clinic or pharmacy, and individual principals of any entity that owns such clinic or pharmacy;~~
 - c. ~~The pain management clinic or pharmacy shall not limit the form of payment for goods or service to cash only;~~
 - d. ~~The pain management clinic or pharmacy shall not accept cash for payment of goods and services associated with the prescribing or dispensing of Schedule II substances except for insurance co-pays, coinsurance, or deductibles; and~~
 - e. ~~Such other conditions as the city commission determines are reasonably related to the public health, safety and welfare.~~
- (2) Pharmacies. During all hours of operation, the pharmacy shall comply with the following conditions:
 - a. ~~The pharmacy shall have a state licensed pharmacist physically on premises at all times during all hours of operation;~~
 - b. ~~The pharmacy shall post a copy of all licensed pharmacists' licenses;~~
 - c. ~~The pharmacy shall require a valid state or federal photo identification, or passport, to identify the patient or, in the case of a minor, his parent or legal guardian's similar identification, prior to the dispensing of any Schedule II substances;~~
 - d. ~~The pharmacy shall only dispense any Schedule II substances as defined in [section 10-408](#) between the hours of 9:00 a.m. to 7:00 p.m.;~~
 - e. ~~The pharmacy shall not dispense more than a 30-day supply of any Schedule II substance provided the patient's valid identification is from the state. For any patient whose valid identification is outside the state, the pharmacy shall not dispense more than a 72-hour supply of any Schedule II substance except that a pharmacy may dispense up to a 30-day supply of any Schedule II substance provided the patient presents a valid photo identification, in accordance with this section, and a utility bill that is not older than three months, that is in the name of the patient or the patient's spouse, and that shows a city address;~~
 - f. ~~The pharmacy shall maintain a legible copy of the prescription for Schedule II substances as defined by [section 10-408](#), the patient's photo identification for each prescription dispensed~~

- or delivered, and the utility bill, if applicable. The records must be maintained for a minimum of two years. Such records shall be available for inspection and copying by the law enforcement agencies, as permitted by F.S. § 893.07, for a minimum of two years;
- ~~g. The delivery, including mail order delivery, of all Schedule II substances shall be prohibited except:~~
- ~~1. To any facility licensed under F.S. ch. 400 or 429;~~
 - ~~2. While fully complying with this article to any address located within the city boundaries and listed on the patient's valid photo identification; or~~
 - ~~3. While fully complying with this article to the address listed within the city boundaries on the utility bill for the patient or the patient's spouse, if applicable;~~
- ~~h. Provide a monthly summary report to the police department for all Schedule II substances as defined in [section 10-408](#) that have been dispensed by this facility. The monthly report shall be provided by the seventh day of each month for the previous month. At a minimum, the report shall include the following:~~
- ~~1. A list of all physicians that have prescribed Schedule II substances and the business address of the prescribing physician;~~
 - ~~2. The number of prescriptions written by each physician or physician's office;~~
 - ~~3. The number of prescriptions associated with each type of Schedule II substances;~~
 - ~~4. Certification from the applicant that the pain management clinic or pharmacy is in compliance with all provisions of the pain medication license; and~~
 - ~~5. A current listing of all suppliers/wholesalers for all Schedule II substances.~~
- ~~(3) Pain management clinics. During all hours of operation, the pain management clinic shall comply with the following conditions:~~
- ~~a. The pain management clinic shall only operate between the hours of 9:00 a.m. to 6:00 p.m.;~~
 - ~~b. Prior to prescribing or dispensing any Schedule II substances, the licensed physician shall perform a physical examination of a patient on the same day at the same location that he dispenses or prescribes any Schedule II substance. The physical exam shall be performed by the licensed physician and shall not be performed by a nurse or physician's assistant. A written report of the physical examination shall be placed in the patient record;~~
 - ~~c. The physician shall require a valid state or federal photo identification, or passport, to identify the patient or, in the case of a minor, his parent or legal guardian's similar identification, prior to the prescribing or dispensing of any Schedule II substances;~~
 - ~~d. A physician shall not prescribe or dispense more than a 30-day supply of any Schedule II substance provided the patient's valid identification is from the state. For any patient whose valid identification is outside the state, the physician shall not prescribe or dispense more than a 72-hour supply of any Schedule II substance except that a physician may prescribe or dispense up to a 30-day supply of any Schedule II substance provided the patient presents:~~
 - ~~1. A valid photo identification in accordance with this section; and~~
 - ~~2. A utility bill that is not older than three months, that is in the name of the patient or the patient's spouse, and that shows a city address;~~
 - ~~e. The physician shall maintain a legible copy of the prescription for Schedule II substances as defined by [section 10-408](#), the patient's photo identification for each prescription, and the utility bill required by this section, if applicable. The records must be maintained for a minimum of two years. Such records shall be available for inspection and copying by the law enforcement agencies, as permitted by law, for a minimum of two years;~~

- ~~f. Each prescription must be clearly documented in the patient record. All written prescriptions must include the name, address, substance name, amount prescribed, and detailed instructions;~~
- ~~g. The pain management clinic shall establish and submit to the city as part of the pain medication license application written policies and procedures governing the management of pain that are reviewed every year and revised more frequently as needed. The written policies and procedures shall include at least the following:~~
 - ~~1. A written procedure for systematically conducting periodic assessment of patient's pain;~~
 - ~~2. Criteria for the assessment of pain, including, but not limited to, pain intensity or severity, pain character, pain frequency or pattern, or both; pain location, pain duration, precipitating factors, responses to treatment and the personal, cultural, spiritual, and/or ethnic benefits that may impact an individual's perception of pain;~~
 - ~~3. A written procedure for the monitoring of a patient's pain;~~
 - ~~4. A written procedure to ensure the consistency of pain rating scales across the pain management clinic;~~
 - ~~5. Requirements for documentation of a patient's pain status on the medical record;~~
 - ~~6. A procedure for educating patients and, if applicable, their families about pain management when identified as part of their treatment;~~
 - ~~7. A written procedure for systematically coordinating and updating the pain treatment plan of patient in response to documented pain status;~~
 - ~~8. Whether or not the pain management clinic requires patients to enter into a narcotic medication agreement, and, if so, whether the agreement addresses the risks associated with taking Schedule II substances; requirements for the patient to use one pharmacy to fill all Schedule II prescriptions; a requirement that the patient not utilize illegal or illicit drugs or obtain additional prescriptions for Schedule II substances; a requirement that prescriptions not be transferred, shared, traded or sold; authorization for the pain management clinic to contact other physicians and pharmacies to validate compliance; indicators of patient misuse, abuse or diversion that may result in noncompliance or violation of the agreement; and the consequences for noncompliance or violation of the agreement, including, but not limited to, patient authorization for referral to law enforcement; and~~
 - ~~9. Whether or not the physician requires random drug screening.~~
- ~~(4) Each pain management clinic shall develop, revise as necessary and implement a written plan for the purpose of annual training and educating staff on pain management policies and procedures. The plan shall be submitted and reviewed as part of the application for pain medication license. The plan shall include mandatory educational programs that address at least the following:~~
 - ~~a. Orientation of new staff to the pain management clinic's policies and procedures on pain management;~~
 - ~~b. Training of non-clerical staff on the dangers of prescription drug diversion, the signs of misuse and abuse, and the importance of patient compliance with prescribed regimens;~~
 - ~~c. Patient rights; and~~
 - ~~d. Implementation of the plan shall include records of attendance of each program for each member of the pain management clinic's staff.~~

- (5) ~~Provide a monthly summary report to the police department for all Schedule II substances as defined in [section 10-408](#) that have been prescribed or dispensed by this facility. The monthly report shall be provided by the seventh day of each month for the previous month. At a minimum, the report shall include the following:~~
- ~~a. List of all physicians that have prescribed Schedule II substances, with their business addresses;~~
 - ~~b. The number of prescriptions written by each physician or physician's office; and~~
 - ~~c. The number of prescriptions associated with each type of Schedule II substances.~~

~~Sec. 10-466. Issuance, revocation, and renewal of pain medication license.~~

- ~~(a) Approval and issuance. Following consideration of the application for a pain medication license by the development review committee, the committee shall forward its recommendation for approval, denial, or conditional approval of the license to the city manager or his designee and the city manager or his designee shall place the application, with recommendations, on the next available city commission agenda, for public hearing. Upon approval or conditional approval of an application for a pain management license by the city commission, based on the criteria of this article, the pain medication license shall be issued, for a period of one year.~~
- ~~(b) Revocation, suspension, or imposition of additional conditions and/or restrictions.~~
- ~~(1) If, at any time, the city manager or his designee determines that any pain medication license holder has failed to comply with any applicable conditions of its license, or is operating in a manner harmful to the public health, safety or welfare and not in compliance with the terms of this chapter he may place on the city commission public hearing agenda an item to determine whether the pain medication license should be revoked. The city manager or his designee shall prepare a report with analysis showing the compliance or noncompliance with the following criteria:~~
- ~~a. During the operation of the pain management clinic or pharmacy, the pain medication license holder has or has not complied with all conditions imposed at the time of license issuance;~~
 - ~~b. During the operation of the pain management clinic or pharmacy, the pain medication license holder has or has not taken all reasonable precautions to discourage unlawful activity, including vandalism, crimes against property or persons, disturbances, loitering of patrons, narcotics use or distribution, excessive noise, vehicular use by impaired patrons, and illegal activity of any kind by employees, patrons or others associated with the establishment;~~
 - ~~c. During the operation of the pain management clinic or pharmacy, the pain medication license holder has or has not taken all reasonable efforts to prevent nuisances and/or criminal activity both inside and outside the establishment;~~
 - ~~d. During the hours of operation, the pain medication license holder has or has not exceeded the number of occupants set by the city building and fire officials as the maximum capacity (persons) for the establishment; or~~
 - ~~e. The pain medication license holder is in compliance with public health, safety or welfare.~~
- ~~(2) The city manager or his designee, on the recommendation of the police chief, shall have the power to enter an order immediately revoking a pain medication license or suspending the operation of said facility.~~

- (3) ~~Within 30 days of the suspension of the operation of the facility, as noted above, a public hearing on said revocation, suspension, or imposition of additional conditions shall be conducted in the manner described in division 2 of this article. The city commission will consider the matter de novo, and will determine whether the city manager or his designee was justified in revoking and/or suspending the pain medication license. The presumption of the correctness of the decision may be overcome by the license holder, upon a showing of competent substantial evidence that the finding of the city manager or his designee was not correct. The burden of proof will be on the applicant seeking the reinstatement of a revoked license.~~
- (4) ~~After consideration of the matter, the city commission may revoke or suspend the pain medication license or allow the licensee to continue operating with the prescribing or dispensing of Schedule II substances, subject to any reasonable additional conditions deemed necessary to mitigate or eliminate the adverse effects of such operation.~~
- (5) ~~Should the pain medication license be revoked, no reapplication for a pain medication license by the owners or operators shall be considered for any location within a 24 month period following the date of final revocation. After the expiration of the 24 month period, a new application and corresponding fee must be submitted.~~
- (c) *Renewal of pain medication license.* ~~Each pain medication license shall be required to be renewed no later than one year following the date of initial granting of the license. The annual renewal of any pain medication license shall be processed by the city manager or his designee and reviewed based upon the criteria of this article. If the city manager or his designee approves the renewal, the license shall be renewed upon payment of the nonrefundable annual fee in the amount of \$200.00 per registered address. The amount of the renewal fee may be modified by resolution of the city commission after a public hearing. If the city manager or his designee denies the renewal, the licensee shall have ten days from the date of the notice of denial to appeal the decision to the city commission in accordance with division 2 of this article. The notice of appeal shall be timely submitted to the city manager and the city shall schedule a public hearing within 30 days of the receipt of the notice. The city commission shall consider the appeal and make a decision with reasons stated using the provisions, terms and criteria set forth in this article. At the time of the requested license renewal, the city manager or his designee may, based on the criteria of [section 10-463](#) recommend the imposition of additional conditions upon the pain medication licensee. If additional conditions are recommended by the city manager or his designee, the renewal shall be placed on the city commission agenda for public hearing on the proposed imposition of additional conditions, in accordance with division 2 of this article. If a license is non-renewed or the commission denies an appeal of the non-renewal, the owners and operators shall not be allowed to apply for a new pain medication license for a period of 24 months. In the event the city non-renews, revokes, or denies a pain medication license, the city reserves the right to contact the appropriate local, state and federal agencies for administrative or criminal action.~~
- (d) *Appeal procedure.* ~~Appeal of any city commission decision regarding the issuance, suspension, revocation or non-renewal of pain medication license shall be to the circuit court, in the manner provided by state law. In accordance with state law, failure to appeal within 30 days of the rendition of the decision shall result in the applicant waiving his right to appeal.~~

~~(e) *Transferability*. A pain management license shall not be transferable. Any change in ownership shall require the new owner to reapply for a new license prior to the prescribing, storing or dispensing of Schedule II substances.~~

~~Sec. 10-467. Pain medication license exemption.~~

~~The agreement for pain medication license exemption, which is attached as Exhibit A to the ordinance from which this article is derived, is hereby adopted and the city manager is authorized to execute agreements for pain medication license exemption that substantially conform to said Exhibit A subject to city attorney approval. The pain medication license exemption agreement is on file in the city clerk's office.~~

SECTION 2. All Ordinances in conflict herewith are hereby repealed.

SECTION 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. The City Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this ordinance with the City Clerk.

SECTION 5. This Ordinance shall take effect immediately upon adoption.

BE IT ORDAINED, by the City Commission of the City of Kissimmee on this _____ day of _____, 2026.

Jackie Espinosa, Mayor-Commissioner

ATTEST:

Tameara Crespo, City Clerk

Approved as to form and legality:

Kalanit Oded, City Attorney

Business Impact Estimate

Proposed ordinance's title/reference: **PROPOSED ORDINANCE NO. 26-19**

AN ORDINANCE REPEALING THE CODE OF ORDINANCES OF THE CITY OF KISSIMMEE, FLORIDA, CHAPTER 10, BUSINESSES AND BUSINESS REGULATIONS, ARTICLE VIII, PAIN MANAGEMENT ESTABLISHMENTS AND PHARMACIES, DIVISIONS 1 THROUGH 4, SECTIONS 10-406 THROUGH 10-467; AND PROVIDING AN EFFECTIVE DATE

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the City is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the City hereby publishes the following information:

¹ See Section 166.041(4)(c), Florida Statutes.

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

This ordinance repeals certain local regulations for pain management clinics and pharmacies.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur;

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

The City does not anticipate that this ordinance will have any direct economic impact on private for-profit businesses in the City. The repeal eliminates duplicative reporting requirements.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

Currently, six businesses are required to report data to the City. The repeal will eliminate their reporting obligation.

4. Additional information the governing body deems useful (if any):

AFFIDAVIT OF PUBLICATION

Osceola News-Gazette
222 Church Street, Kissimmee, FL 34741
(407) 846-7600

State of Florida, County of Orange, ss:

I, Anjana Bhadoriya, of lawful age, being duly sworn upon oath depose and say that I am an agent of Column Software, PBC, duly appointed and authorized agent of the Publisher of Osceola News-Gazette, a publication that is a "legal newspaper" as that phrase is defined for the city of Kissimmee, for the County of Osceola, in the state of Florida, that this affidavit is Page 1 of 1 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates. Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Publication Dates:

- Jul 30, 2026

Notice ID: YadqBzF6ckP7pj4A1qbZ

Notice Name: COK ORDINANCE 26-19 -
Repealing Pain Mgmt Est

PUBLICATION FEE: \$67.42

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true,

Anjana Bhadoriya

Agent

VERIFICATION

State of Florida
County of Orange



JESSICA GORDON-THOMPSON
Notary Public - State of Florida
Commission # HH301656
Expires on August 17, 2026

Signed or attested before me on this: 07/30/2026

J. R.

Notary Public

Notarized remotely online using communication technology via Proof.

NOTICE OF PUBLIC HEARING

The City Commission of the City of Kissimmee, Florida will meet on **Tuesday, August 4, 2026, at 6:00 p.m.** in the City Commission Chambers, Municipal Administration Building, 101 Church Street, Kissimmee, Florida, to hear the **FIRST READING** and will meet on **Tuesday, August 18, 2026, at 6:00 p.m.** to hear the **SECOND AND FINAL READING** and consider the passage of the proposed ordinance as set forth below. The proposed Ordinance may be inspected in the Office of the City Clerk at the Municipal Administration Building, 101 Church Street, Kissimmee, Florida. All interested parties may appear and be heard on the above dates.

PROPOSED ORDINANCE # 26-19

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CITY COMMISSION
KISSIMMEE, FLORIDA

IN ACCORDANCE WITH FLORIDA STATUTE 286.0105: ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

IN ACCORDANCE WITH FLORIDA STATUTE 286.26, PERSONS NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE OFFICE OF THE CITY CLERK AT 407-518-2308, 101 CHURCH STREET, KISSIMMEE, FL 34741, PRIOR TO THE MEETING (FS 286.26).
July 30, 2026