



**CITY COMMISSION AGENDA  
CITY HALL COMMISSION CHAMBERS  
300 W. Plant Street**

**REGULAR MEETING**

**MAY 12, 2011**

**6:30 P.M.**

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**CALL TO ORDER**

Determination of a Quorum

Invocation and Pledge of Allegiance

1. **APPROVAL OF MINUTES**

Regular Meeting of April 28, 2011

2. **PRESENTATIONS**

A. Introduction of Kathy Salerno, Outreach and Education Coordinator for the State of Florida Chief Financial Officer Jeff Atwater (*postponed from March 24 and April 28, 2011*)

B. Recognition of John Love's 30 years of service to the citizens of Winter Garden – Mayor Rees and City Commissioners

C. Presentation by Guy Haggard, Esq., Chairperson of the West Orange Airport Authority on their activities

3. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

A. **Ordinance 11-09:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 78-57 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO REMOVE OBSOLETE PROVISIONS PERTAINING TO SUPERSEDED IMPACT FEE RATES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE – Public Services Director Cochran

B. **Ordinance 11-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS AND THE ABUSE OF PRESCRIPTION PAIN MEDICATION; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A TEMPORARY MORATORIUM ON THE OPENING OF NEW PAIN MANAGEMENT CLINICS AND ON THE EXPANSION OR RELOCATION OF EXISTING PAIN MANAGEMENT CLINICS; RESTRICTING HOURS OF OPERATION FOR SUCH CLINICS; DIRECTING STAFF TO STUDY AND REPORT TO THE CITY COMMISSION ON ISSUES RELATING TO PAIN MANAGEMENT CLINICS BY A DATE CERTAIN; PROVIDING FOR PENALTIES, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE – City Manager Bollhoefer

4. **REGULAR BUSINESS**

- A. Recommendation to approve entering into a interlocal agreement with Orange County give the City of Winter Garden jurisdiction to operate and maintain certain local roads – Public Services Director Cochran
- B. Recommendation to approve entering into a interlocal agreement with Orange County for transferring Winter Garden Vineland Road from the south right-of-way line of State Road 429 to the north right-of-way of Stoneybrook West Parkway – Public Services Director Cochran

5. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

6. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

7. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

**ADJOURN** to a regular City Commission meeting on May 26, 2011 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

**ORDINANCE 11-09**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 78-57 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO REMOVE OBSOLETE PROVISIONS PERTAINING TO SUPERSEDED IMPACT FEE RATES; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** on January 13, 2011, the City enacted Ordinance #11-02, which amended Chapter 78 of the Winter Garden Code of Ordinances by providing, in part, for the addition of new § 78-59 governing water and wastewater impact fees, including water impact fees for irrigation purposes;

**WHEREAS,** certain portions of Section 78-57 of the City's Code of Ordinances continue to contain obsolete references to impact fees for irrigation purposes superseded by Ordinance #11-02; and

**WHEREAS,** for clarification, the City desires to remove such obsolete and superseded portions of Section 78-57 of the Winter Garden Code of Ordinances.

**BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:**

**Section 1:** **Authority.** The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII, § 2(b) of the Constitution of the State of Florida, and Chapter 166, Florida Statutes.

**Section 2:** **Adoption.** Section 78-57(c) & (d) of the Code of Ordinances, City of Winter Garden, are hereby deleted as follows, and Section 78-57(e) shall be relettered as 78-57(c) to account for such deletion (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

(c) ~~Meter impact fee by meter size. The meter impact fee by meter size shall be as follows:~~

**TABLE INSET:**

<del>Meter Size (inches)</del>	<del>Impact Fees[1]</del>
<del>3/4</del>	<del>\$536.00</del>
<del>1</del>	<del>1,310.00</del>
<del>1 1/2</del>	<del>2,096.00</del>
<del>2</del>	<del>2,995.00</del>

(d) ~~Meter installation charges. Installation charges shall be the costs of labor and materials, including, but not limited to, the costs of the meters, meter boxes, corporation stops, valves, and~~

~~appurtenances thereof, plus a surcharge of 20 percent to cover engineering and administration costs.~~

- (ec) *Residential use of irrigation meter installation.* Only three-quarter-inch size irrigation meters are authorized for installation on residential lots for irrigation purposes for those customers which receive both individually metered domestic and irrigation service from a single service connection.

**Section 3:**      **Codification.** Section 2 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

**Section 4:**      **Control.** To the extent that this ordinance conflicts wholly or partially with any previously enacted ordinance, this ordinance shall control to the extent any such conflict exists.

**Section 5:**      **Severability.** It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

**Section 6:**      **Effective Date.** This Ordinance shall become immediately effective upon adoption at its second reading and, given the remedial nature of this Ordinance, shall be retroactively applicable as of the effective date of Ordinance 11-02.

**FIRST READING:** \_\_\_\_\_ April 28 \_\_\_\_\_, 2011.

**SECOND READING AND PUBLIC HEARING:** \_\_\_\_\_ May 12 \_\_\_\_\_, 2011.

**ADOPTED** this \_\_\_\_\_ 12th \_\_\_\_\_ day of \_\_\_\_\_ May \_\_\_\_\_, 2011, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

\_\_\_\_\_  
JOHN REES, Mayor/Commissioner

ATTEST:

\_\_\_\_\_  
KATHY GOLDEN, City Clerk

**ORDINANCE NO. 11-10**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS AND THE ABUSE OF PRESCRIPTION PAIN MEDICATION; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A TEMPORARY MORATORIUM ON THE OPENING OF NEW PAIN MANAGEMENT CLINICS AND ON THE EXPANSION OR RELOCATION OF EXISTING PAIN MANAGEMENT CLINICS; RESTRICTING HOURS OF OPERATION FOR SUCH CLINICS; DIRECTING STAFF TO STUDY AND REPORT TO THE CITY COMMISSION ON ISSUES RELATING TO PAIN MANAGEMENT CLINICS BY A DATE CERTAIN; PROVIDING FOR PENALTIES, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Winter Garden, Florida (the "City"), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

**WHEREAS**, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, local and state law enforcement agencies have found that the City, Orange County, and the State of Florida is currently experiencing an epidemic of prescription pain medication abuse and that this epidemic constitutes an immediate and pressing threat to the public health, safety, and welfare of the City; and

**WHEREAS**, local and state law enforcement agencies have advised that certain controlled substances lawfully used as prescription pain medications are being diverted from their lawful therapeutic uses to unlawful and dangerous drug abuse; and

**WHEREAS**, the unlawful distribution of prescription pain medication and increasing crime associated with such activity has created an urgent public health and safety emergency requiring immediate action; and

**WHEREAS**, the Florida legislature is currently in the process of reviewing the recent proliferation of pain management clinics and prescription drug epidemic arising concurrently therewith; and

**WHEREAS**, the Florida legislature is proposing and considering, but has not yet enacted, additional legislation designed to combat the recent proliferation of facilities primarily engaged in the dispensing of prescription pain medication (*i.e.*, pain clinics) and the concomitant epidemic of prescription pain medication abuse in the state of Florida; and

**WHEREAS**, several counties and municipalities in Florida have established moratoria on new pain management clinics to help curb the immediate and unchecked deleterious consequences of these clinics, such consequences including illegal drug trafficking, the illegal purchase and sale of prescription pain medication, loitering and other criminal

behavior in and around such clinics, the diversion of prescription drugs for unlawful and dangerous uses, and an alarming increase in deaths related to and caused by prescription drug abuse; and

**WHEREAS**, on December 2, 2010, the Florida Department of Law Enforcement (the "FDLE") released the Florida Medical Examiners Commission 2010 Interim Report on Drugs Identified in Deceased Persons. The report aggregated toxicology reports submitted to the Florida Medical Examiners Commission and found that during January through June of 2010, of the 89,800 deaths occurring in Florida from all causes, 4,150 were drug-related. Of the 4,150 drug-related deaths, the report found as follows:

**The drug that caused the most deaths during the study period (715 decedents) was Oxycodone (trade names include OxyContin).**

**Prescription drugs accounted for 81% of all drug-related deaths when excluding deaths related to Ethyl Alcohol.**

**1,268 people died with at least one prescription drug in their system that was, in the opinion of the medical examiner, the cause of death.**

**In the Ninth Medical Examiner District (consisting of Orange and Osceola counties), 63 deaths were related to Alprazolam (trade names include Xanax).**

**In the Ninth Medical Examiner District, 27 deaths were related to Diazepam (trade names include Valium).**

**In the Ninth Medical Examiner District, 76 deaths were related to Oxycodone (trade names include OxyContin).**

**In the Ninth Medical Examiner District, 30 deaths were related to Hydrocodone (trade names include Vicodin and Lortab).**

**In the Ninth Medical Examiner District, 15 deaths were related to Proxyphene (trade names include Darvon and Darvocet).**

**WHEREAS**, the interim report of a Broward County grand jury entitled "The Proliferation of Pain Clinics in South Florida" (dated November 19, 2009) identified Orange County as one of the top ten counties in the nation for units of Oxycodone dispensed by top 50 dispensing doctors for the period of July 2008 to December 2008 and for the period of October 2008 to March 2009; and

**WHEREAS**, Broward County formed a Pain Management Clinic Task Force which did extensive research and review of the issues regarding the licensing and location of pain management clinics and issued its Final Report dated January 13, 2011; and

**WHEREAS**, based on the foregoing studies and information from state and local law enforcement agencies, the City Commission hereby finds and declares that the abuse

of prescription pain medication can and does lead to property crimes, violent crime, drug dependency, debilitating sickness, and death; and

**WHEREAS**, this Ordinance is not intended to interfere with the lawful prescription and use of controlled substances; and

**WHEREAS**, the City Commission hereby finds and declares that the temporary moratorium established by this Ordinance is being imposed for the minimum amount of time necessary for City staff to analyze and report to the City Commission on the matter of prescription drug abuse and pain management clinics; and

**WHEREAS**, the City Commission hereby finds and declares that this Ordinance is in the best interest of the public health, safety, and welfare, and that it advances a significant and important governmental interest.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:**

**AUTHORITY.** The City Commission of the City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

**FINDINGS OF FACT.** The foregoing “**WHEREAS**” clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**DEFINITIONS.** For the purposes of this Ordinance, the following words, terms, and phrases, including their respective derivatives, have the following meanings:

**“Conduct business” means any one or more of the following activities:**

Seeing or examining patients.

Filling prescriptions or otherwise providing controlled substances to patients or customers.

Settling accounts receivable for goods or services provided onsite.

Inviting or allowing patients or customers into the premises.

Allowing patients or customers to congregate or await goods or services within the premises.

**“Controlled substance” means any substance named or described in Schedules I through V of section 893.03, Florida Statutes, as may be amended from time to time.**

**“Pain management clinic” means a privately owned pain management clinic, facility, or office (hereinafter referred to as a “clinic”), which advertises in any medium for any type of pain management service, or employs a physician or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, including but not limited to opiates and opioids such as codeine, fentanyl, hydrocodone, morphine and oxycodone. For the purposes of this ordinance, pain management clinics shall be considered a land use separate and distinct from all other clinical or medical uses described in the City’s code of ordinances. Regardless of the foregoing, the following types of facilities shall be exempt from the effect of this Ordinance:**

Clinics licensed as a facility pursuant to chapter 395, Florida Statutes.

Clinics where the majority of the physicians or osteopathic physicians who provide services primarily provide surgical services.

Clinics 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 exceeded \$50 million.

Clinics affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

Clinics that do not prescribe or dispense controlled substances for the treatment of pain.

Clinics owned by a corporation exempt from federal taxes pursuant to 26 United States Code section 501(c)(3) or (4), as may be amended.

**TEMPORARY MORATORIUM.** Beginning on the effective date of this Ordinance and continuing through May 12, 2012, or sooner as provided in Section 5 of this Ordinance, a moratorium is hereby imposed on the opening of new pain management clinics and on the expansion or relocation of existing pain management

clinics. During the moratorium, the following shall be unlawful and a violation of this Ordinance:

**During the moratorium, it is unlawful and a violation of this Ordinance for any person, firm, or corporation to open or caused to be opened any pain management clinic within the City of Winter Garden.**

**During the moratorium, it is unlawful and a violation of this Ordinance for any person, firm, or corporation to relocate or cause to be relocated any pain management clinic within the City of Winter Garden.**

**During the moratorium, it is unlawful and a violation of this Ordinance for any person, firm, or corporation to expand or cause to be expanded any pain management clinic within the City of Winter Garden. For the purposes of this subsection, the terms “to expand” and “cause to be expanded” mean to “enlarge the physical size of”.**

**EXPIRATION OF THE TEMPORARY MORATORIUM.** The temporary moratorium imposed by Section 4 of this Ordinance expires as of the earliest of the following occurrences:

**May 12, 2012, one year from the effective date of this Ordinance; or**

**The effective date of an ordinance, adopted by the City Commission after the effective date of this ordinance, that addresses the appropriate location of and zoning classifications for pain management clinics located within the City of Winter Garden; or**

**At such time as the City Commission receives a report from City staff on issues relating to pain management clinics and votes by majority vote to repeal this moratorium.**

**HOURS OF OPERATION.** During the moratorium established by this Ordinance, it is unlawful and a violation of this Ordinance for any person, firm, or corporation to conduct business at an existing pain management clinic between 8:00 p.m. and 8:00 a.m. the following day.

**STAFF REPORT.**

**This moratorium has been established for the minimum time period necessary for the City staff to analyze the effects and impacts of pain management clinics in the City of Winter Garden; analyze the criteria for additional standards needed, if any, under zoning, land use, land development and general police power regulations in connection with the issuance of development permits, business licenses, business tax receipts, or approvals for pain management clinics within the City; analyze any new laws regarding pain management clinics enacted by the Florida legislature; complete an analysis of illegal drug use, distribution patterns and other public health, safety and welfare issues that are associated with some pain management clinics that dispose narcotics on site; and to take recommendations to the City Commission regarding whether there is a need to enact an ordinance regulating pain management clinics so as to promote the health, safety and general welfare of the citizens of the City.**

**City staff is directed to provide a report to the City Commission of its findings and recommendations not later than April 15, 2012.**

**PENALTIES.** Unless as otherwise provided herein, violations of this Ordinance shall be punishable in accordance with § 118-6 of the City of Winter Garden Code. In addition, the City may bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

**CONFLICTS.** All ordinances or parts of ordinances in conflict herewith are suspended for the duration of the moratorium established by this Ordinance.

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

**EFFECTIVE DATE.** This Ordinance shall become effective upon its adoption.

