

ORDINANCE NO. 2010 - _____
Moratorium Pain Management Clinics

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS; IMPOSING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR NEW PAIN MANAGEMENT CLINICS; ADOPTING FINDINGS; PROVIDING DEFINITIONS; ESTABLISHING THAT NO PAIN MANAGEMENT CLINIC MAY LIMIT ITS BUSINESS TO CASH ONLY; ESTABLISHING HOURS OF OPERATION FOR PAIN MANAGEMENT CLINICS; DIRECTING STAFF TO STUDY, ANALYZE AND REPORT TO THE CITY COUNCIL ON ISSUES RELATING TO PAIN MANAGEMENT CLINICS BY A DATE CERTAIN; PROVIDING FOR PENALTIES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Flagler County Sheriff has advised the City Council of the City of Palm Coast (“City Council”) that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating in Florida and in and around Flagler County; and

WHEREAS, the illegal distribution of prescription drugs, increased crime associated with such activity, and the relatively high number of deaths in and around Flagler County relating to prescription drug abuse has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the citizens of the City of Palm Coast (“the City”); and

WHEREAS, the Florida Legislature has identified concerns regarding the increased use and abuse of substances controlled by federal and/or state law and the frequency of injury and death occurring as a result of the increased availability of controlled substances via medical practitioners operating in pain management clinics or facilities; and

WHEREAS, Florida Statutes require physicians and other persons dispensing prescription drugs through pain management clinics, facilities or offices, to register with the State Department of Health in order to conduct such business; and

WHEREAS, while the State of Florida legislature has enacted new legislation and new rules regulating pain management clinics, the effective date of the new state rules has been delayed, undercutting the State Department of Health’s plans to initiate inspections of pain management clinics in Florida, the proposed state-wide data base to track pain pill prescriptions has also been delayed, and there is apparent inadequate

funding for the effective enforcement of this legislation and these rules, if and when they become effective.

WHEREAS, an increasing number of counties and municipalities in Florida have established moratoria on certain new pain management clinics to curb the immediate negative impacts created by these clinics, such as illegal prescription drug trafficking and sales of illegal drugs around the clinics, and loitering in areas surrounding the clinics; and

WHEREAS, the negative impacts associated with certain pain management clinics creates an urgent situation necessitating immediate investigation into and potential regulation of such clinics in Palm Coast; and

WHEREAS, it is not the intent of this Ordinance to interfere with legitimate medical clinics or the legal prescription, dispensation, or use of controlled substances; and

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

WHEREAS, the City Council intends by this ordinance to implement a moratorium on the issuance of any new Business Tax Receipts (Occupational Licenses) for pain management clinics and to direct City staff to work with the Sheriff to analyze the effects of pain management clinics on the community and to prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens of the City by local regulation of pain management clinics; and

WHEREAS, at least during the term of this moratorium, the City Council desires to adopt restrictions on the form of payment that is made at pain management clinics and limitations on the hours of operation of such clinics.-

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST:

Section 1. The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Definitions. For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings:

A. *Chronic nonmalignant pain* means pain unrelated to cancer, which persists beyond the usual course of the disease or injury that is the cause of the pain, for more than ninety (90) days after surgery.

B. *Controlled substance* is defined as in section 893.02, Florida Statutes, and means a controlled substance listed in Schedule I to V in section 893.03, Florida Statutes.

C. *Pain management clinic* means any privately owned pain management clinic, facility or office which advertises in any medium for any type of pain management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medication and is required to register with the Florida Department of Health pursuant to sections 458.3265 or 459.0137, Florida Statutes, as may be amended from time to time. *Pain management clinic* does not include a clinic:

1. Licensed as a facility pursuant to Chapter 395, Florida Statutes, as may be amended;
2. Where the majority of the physicians who provide services in the clinic primarily provide surgical services;
3. Owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million dollars;
4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

5. That does not prescribe or dispense controlled substances for the treatment of pain; or

6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) as may be amended.

D. *Physician primarily engaged in the treatment of pain* means a physician who prescribes or dispenses controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain.

Section 3. Moratorium.

A. Beginning on December 22, 2010, a moratorium shall exist and expire on December 31, 2011, or sooner as provided herein, during which time the Business Tax Receipt Office shall not issue any new Occupational License or Local Business Tax Receipt to any person for the purpose of engaging in, operating, or managing a pain management clinic. The Business Tax Receipt Office is authorized to renew or transfer any Occupational License or Local Business Tax Receipt to any person for the purpose of engaging in or managing a pain management clinic existing on the effective date of this ordinance. However, if a pain management clinic is not registered with the Florida Department of Health as required by sections 458.3265 or 459.0137, Florida Statutes, the Occupational License or Local Business Tax Receipt is not eligible for renewal or transfer.

B. The moratorium shall expire upon the earlier of the following:

1. On December 31, 2011;

2. The effective date of an ordinance, adopted by the City Council, to address drug use and distribution associated with some pain management clinics which dispense narcotic drugs on site in Palm Coast; or

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

C. If, during the time of this moratorium, an application is made for issuance of a business tax receipt for the operation of the following categories, which as represented by the applicant at the time of application, is not being operated and will not be operated during the period of time covered by the business tax receipt as a pain management clinic, the applicant, as a condition of issuance of the business tax receipt, shall execute and deliver to the Business Tax Receipt Office an affidavit confirming such representation. If, during the time covered by the business tax receipt, the clinic, facility or office is found to be, in fact, operating as a pain management clinic, the business tax receipt shall be subject to immediate revocation in proceedings for Code violations, in addition to any other civil or criminal remedies or penalties available under local, county, state, and federal laws. Failure or refusal of applicant to execute and deliver the affidavit shall result in a denial of the issuance of the business tax receipt. An executed affidavit shall accompany an application for a business tax receipt in the following categories:

Business Tax Receipt Category
Amusement/Permanent or Transient
Personal Services
Business Services
Health Services
Professional offices

Section 4. No Cash Only. During the moratorium established herein, no pain management clinic shall limit patient payment options to cash only.

Section 5. Hours of Operation. During the moratorium established herein, the hours of operation of a pain management clinic in operation as of December 22, 2010 shall be limited to 7 a.m. to 9 p.m. of the same day.

Section ~~5~~6. Staff Report.

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

B. City staff is directed to provide a report to the City Council of its findings and recommendations no later than August 31, 2011.

Section ~~6~~7. Penalties. Unless as otherwise provided herein, violations of this Ordinance shall be punishable in accordance with Section 1-15 and Chapter 2, Article IV, Division 1, of the City of Palm Coast Code of Ordinances. In addition, the City may

bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

Section 78. Codification. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance may become and be made a part of the Code of Ordinance of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to Section," "Article," or other appropriate word.

Section 89. Effective Date. This Ordinance shall become effective December 22, 2010.

Approved on first reading this 7th day of December 2010.

Adopted on the second reading after due public notice and hearing City of Palm Coast this 21st day of December 2010.

CITY OF PALM COAST, FLORIDA

ATTEST:

JON NETTS, MAYOR

VIRGINIA A. SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY:

William E. Reischmann Jr. Esquire
City Attorney