

ORDINANCE NO. 2840-11

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND RECEIPT OF ANY APPLICATION FOR, OR ISSUANCE OF, BUSINESS TAX RECEIPTS, BUSINESS LICENSURE AND LAND USE APPROVALS FOR THE OPERATION OF "PAIN MANAGEMENT CLINICS" FOR 320 DAYS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, there has been a recent proliferation of pain clinics, pain management clinics, and cash only pharmacies throughout the State of Florida; and

WHEREAS, the Prescription Drug Monitoring Program set forth in Florida law, Section 893.055, Florida Statutes, was purported to commence by December 1, 2010, but the Program has not been funded as of this date, or is otherwise not operational, and there is a present discussion in the Florida Legislature whether the Program will be implemented, and therefore there is a current absence of effective regulation of the dispensing of controlled substances and prescriptions for controlled substances for physicians; and

WHEREAS, it has been reported that the implementation of Florida's Prescription Drug Monitoring Program will be delayed as a result of a pending bid protest and other challenges as reported in the 2010 Annual Report concerning Florida's Prescription Drug Monitoring Program, issued by the Executive Office of the Governor, Office of Drug Control; and

WHEREAS, the state's Program under current law may not be funded using state revenues and the ultimate implementation of the Program at this time is in doubt or at a minimum, is subject to substantial uncertainty; and

WHEREAS, the U.S. Department of Health and Human Services has released data showing that prescription drug deaths are now the fourth leading cause of death in the United States, after heart disease, cancer and stroke; and

WHEREAS, various studies and reports have been conducted concerning the proliferation of pain management clinics in Florida, and in 2008, prescription drugs were attributed to an average of nearly 13.5 deaths per day in Florida; and

WHEREAS, the Florida Department of Law Enforcement released the Florida Medical Examiners Commission Report on Drugs Identified in Deceased Persons on December 2, 2010, which report shows the lethal consequences of the diversion and abuse of prescription drugs; and .

WHEREAS, reports have found that burglaries and robberies in the areas where pain management clinics are located have increased; drug trafficking in prescription drugs and street level sales of prescription drugs have increased; and identity theft and organized criminal activities have increased; and

WHEREAS, on-site dispensing of prescription drugs requires additional security measures be in place to assure the public health, safety, and welfare; and

WHEREAS, according to a study reported by the New York Times in 2008, while 38 other states have prescription drug monitoring programs that track sales, Florida does not, resulting in, according to federal, state and local law enforcement officials, Florida becoming a source of prescription drugs that are illegally sold across the country; and

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

WHEREAS, several 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 create an urgent situation necessitating immediate investigation into regulation of such clinics in the City; and

WHEREAS, the Board of County Commissioners of Orange County, Florida, imposed a moratorium on new pain clinics in Orange County, beginning December 15, 2010, and continuing through December 14, 2011, for a term of one year, during which time no new occupational licenses may be issued for pain management clinics; and

WHEREAS, under its home rule authority, the City 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 believes that by establishing a moratorium for three hundred twenty (320) days on the issuance of business tax receipts or land use approvals for pain management clinics, the City will have the opportunity to research and study various regulatory options; and

WHEREAS, the City Commission finds it is the best interest of the citizens of the City to minimize and control the adverse effects of pain clinics and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values by adopting appropriate regulations regulating thereto; and

WHEREAS, the City Commission of the City of Winter Park, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Park.

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER PARK HEREBY ORDAINS, AS FOLLOWS:

Section 1. Recitals. The recitals set forth above are hereby adopted and incorporated herein by reference.

Section 2. Definition of Pain Management Clinic.

For the purposes of this Ordinance, a "pain management clinic" is a clinic required to be registered with the Department of health pursuant to Section 458.3265 or Section 459.0137, Florida Statutes. Said clinics are generally defined as:

All privately owned pain-management clinics, facilities, or offices, which advertise in any medium for any type of pain-management services, or employ a physician or an osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, unless:

1. That clinic is licensed as a facility pursuant to Chapter 395;
2. The majority of the physicians who provide services in the clinic primarily provide surgical services;
3. The clinic is 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;
4. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

5. The clinic does not prescribe or dispense controlled substances for the treatment of pain; or
6. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. § 501(c)(3).

Section 3. Temporary Moratorium Upon the Issuance of Pain Management Clinics.

All activities relating to the acceptance, review and action upon applications related to a pain management clinic are temporarily suspended in order for the City of Winter Park, through its officials and staff, to have adequate time and opportunity to conduct a study or studies and comprehensively analyze the adequacy of application criteria, standards, and other approved processes and procedures related to the issuance of said permits within the City of Winter Park. Accordingly, there is hereby established and imposed a temporary moratorium on the receipt and/or acting upon applications for any and all land use approvals or business tax receipts related to pain management clinics for a period of three hundred twenty (320) days from the effective date of this Ordinance in order to permit the City to research the nature and scope of possible measures of mitigation and regulation of pain management clinics.

During the time the temporary moratorium is in effect, the City will not accept any applications or act on any pending applications for any land use approvals or business tax receipts or other license or permit of any type for pain management clinics and no pain management clinics shall be permitted within the City. In addition, the City shall not accept payments of the business tax for pain management clinics and shall return any funds accepted for pending applications during the period of time the moratorium is in effect.

It is unlawful for any person or entity to own or operate a pain management clinic in violation of the moratorium enacted by this Ordinance. Any person or entity owning or operating a pain management clinic in violation of this Ordinance shall be subject to the maximum penalty of three hundred dollars (\$300.00) per day pursuant to Chapter 1 of the Municipal Code of Ordinances and Chapter 162, Florida Statutes. Further, any person or entity owning or operating a pain management clinic in violation of this Ordinance is subject to all applicable provisions of the Municipal Code, including Chapter 1 thereof, relating to the enforcement of violations of the Municipal Code.

Section 4. Existing Businesses. Except as provided in Section 7 of this Ordinance, this moratorium shall not affect any business currently operating within the City pursuant to a validly issued business tax receipt as long as the business and property are in compliance with applicable local, county, state and federal laws.

Section 5. New Business Tax Receipts. Applications for business tax receipts for operation of pain management clinics received after the date the City Commission directed this moratorium be enacted shall be returned to the applicant along with any funds accepted for pending applications.

Section 6. Renewal of Business Tax Receipts. The City Manager, or his or her designee, is authorized to renew the business tax receipt of any existing business affected by this moratorium with a valid business tax receipt in the event such receipt expires before the expiration of this moratorium, upon a finding that the business is in compliance with applicable local, county, state and federal laws.

Section 7. No Cash Only. During the moratorium established herein, no pain management clinic in operation as of the effective date of this Ordinance shall limit patient payment options to cash only.

Section 8. Hours of Operation. During the moratorium established herein, the hours of operation of a pain management clinic in operation as of the effective date of this Ordinance shall be limited to 7:00 a.m. to 9:00 p.m. of the same day.

Section 9. Extension of Time. Notwithstanding the time limit on the moratorium herein established, in the event the City Commission finds that additional time is needed for staff to conclude its review of the problems associated with pain management clinics within the City and for the drafting of regulations of those businesses, then the term of this Ordinance may be extended by the City Commission for an additional ninety (90) days by resolution.

Section 10. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 11. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 12. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida, and pursuant to City Charter.

ADOPTED by the City Commission of the City of Winter Park, Florida, in a regular meeting held on the 25th day of April, 2011.

Kenneth W. Bradley
Kenneth W. Bradley, Mayor

Attest: Cynthia S. Bonham
Cynthia S. Bonham, City Clerk