

ORDINANCE NO. 2874-12

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS AND PHARMACIES; REPEALING THE MORATORIUM ON PAIN MANAGEMENT CLINICS ADOPTED BY ORDINANCE NO. 2840-11 AS EXTENDED BY ORDINANCE NO. 2872-12; ESTABLISHING REGULATIONS OF PHARMACIES AND PAIN MANAGEMENT CLINICS; TO BE CODIFIED AS ARTICLE II, CHAPTER 54 WINTER PARK CITY CODE; CREATING REGISTRATION AND SUPPLEMENTAL MONTHLY REPORTING REQUIREMENTS FOR ALL PAIN MANAGEMENT CLINICS; CREATING SUPPLEMENTAL ZONING REGULATIONS FOR NEW PAIN MANAGEMENT CLINICS; CREATING SUPPLEMENTAL REGULATIONS FOR ALL PHARMACIES; PROVIDING THAT PHARMACIES AND PAIN MANAGEMENT CLINICS SHALL NOT CO-LOCATE; ALLOWING FOR APPLICATION FOR VARIANCE FROM THE COLOCATION BAN; CREATING A REQUIREMENT FOR ALL PHYSICIANS AND PHARMACISTS TO CHECK THE PRESCRIPTION DRUG MONITORING PROGRAM PRIOR TO PRESCRIBING OR DISPENSING DANGEROUS DRUGS; PROVIDING DEFINITIONS, TO ADD A DEFINITION FOR "PAIN MANAGEMENT CLINIC" AND TO EXCLUDE PAIN MANAGEMENT CLINIC FROM THE TERM "CLINIC"; AMENDING SECTION 58-78 PERMITTED ZONING USES, ADDING PAIN MANAGEMENT CLINIC AS A PERMITTED USE IN THE I-1 ZONING DISTRICT; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park City Commissioners are advised that a pattern of illegal drug use and distribution of certain dangerous drugs has been linked in large part to certain pain management clinics operating in and around the Central Florida area, including the City of Winter Park; and

WHEREAS, certain opiate analgesic dangerous drugs, that may be safe when used moderately or properly, have been shown to be particularly dangerous when overprescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs and have been shown to be particularly dangerous when over-consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, close in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispensing pharmacies, often by using multiple and false identities at both medical clinics and pharmacies; and

WHEREAS, the dangerous overprescribing and excessive consumption of high amounts of those dangerous opiate prescription drugs has resulted in increased addiction of persons, increased crime associated with such activity, and resulted in a high number of deaths in the Central Florida area and around the City of Winter Park related to prescription drug abuse and 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 Winter Park; and

WHEREAS, the State of Florida has implemented a Prescription Drug Monitoring Program which could be an effective tool in the City of Winter Park to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and, if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information; and

WHEREAS, on April 25, 2011, the City Commission adopted Ordinance No. 2840-11 to implement a moratorium on the issuance of any new Business Tax Receipts for pain management clinics, to direct City staff to analyze the effects of pain management clinics on our community and prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens for the City by local regulation of pain management clinics, to restrict cash only operations, and to regulate hours of operation of existing clinics through the period of the moratorium (as extended by Ordinance No. 2872-12); and

WHEREAS, on July 19, 2011, Orange County Mayor Teresa Jacobs' Prescription Drug Task Force (Task Force) began a series of meetings to address the serious issue of prescription drug abuse in the Orange County community through law enforcement, healthcare and pharmacies, prevention education, and public policy; and

WHEREAS, the Task Force identified negative adverse secondary effects associated with pain management clinics that necessitate a recommendation for certain changes to the City of Winter Park Code that will result in additional substantive and zoning regulations for pain management clinics and pharmacies in the City of Winter Park; and

WHEREAS, with the adoption of this Ordinance, the City Commission intends to lift the moratorium implemented in Ordinance No. 2840-11 (as extended by Ordinance No. 2872-12) and impose those substantive and zoning regulations on pain management clinics and pharmacies in the City of Winter Park.

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

Section 1. *Repeal of Moratorium Ordinance.* The moratorium ordinances against pain management clinics implemented by Ordinance No. 2840-11 and Ordinance No. 2872-12, are hereby repealed.

Section 2. *Creation of Pain Management Clinic Ordinance.* A Pain Management Clinic Ordinance is hereby created by amending Chapter 54 – Health and Sanitation to make existing as Section 54-1 – Smoking, Article 1 and adding a new Article II, Chapter 54 to read as follows:

ARTICLE II
Sec. 54-2. Findings of Fact; Intent and Purpose.

(a) The City of Winter Park Board of City Commissioners are advised and informed that a pattern of illegal drug use and distribution of certain dangerous drugs has been linked in large part to certain pain management clinics operating in and around the Central Florida area and the City of Winter Park and distributing or prescribing dangerous drugs; and

(b) Certain opiate analgesic dangerous drugs, that may be safe when used moderately or properly, have been shown to be particularly dangerous when overprescribed by doctors in specialized businesses that are primarily focused on treating large numbers of persons who complain of any pain with very high doses of opiate drugs; and have been shown to be particularly dangerous when over-consumed by citizens and visitors who may obtain a large number of such opiate drugs by engaging in doctor shopping to obtain multiple prescriptions, close in time, from multiple doctors, by failing to disclose prior recent prescriptions to subsequent doctors, and then obtaining the prescriptions from multiple dispensing pharmacies, often by using multiple and false identities at both medical clinics and pharmacies; and

(c) The dangerous overprescribing and excessive consumption of high amounts of those dangerous opiate prescription drugs has resulted in increased addiction of persons, increased crime associated with such activity, and resulted in a high number of deaths in Central Florida related to prescription drug abuse and 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 Winter Park; and

(d) The State of Florida has implemented a Prescription Drug Monitoring Program which could be an effective tool in the City of Winter Park to reduce successful doctor shopping, or multiple prescriptions, or multiple pharmacy filling of prescriptions and dispensing of potentially dangerous opiate drugs, if local physicians are careful to check the database before prescribing potentially dangerous opiate drugs; and if reports are made to the database immediately when potentially dangerous opiate drugs are prescribed by local physicians or dispensed by local pharmacies so that other physicians and pharmacies can know that information; and

(e) Certain opiate analgesic drugs have been shown to be particularly dangerous when over-prescribed by doctors or over-consumed by citizens and visitors; and

(f) The illegal distribution of these dangerous prescription drugs, increased crime associated with such activity, and the high number of deaths in Central Florida 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 City of Winter Park citizens; and

(g) On July 19, 2011, Orange County Mayor Teresa Jacobs' Prescription Drug Task Force (Task Force) began a series of meetings to address the serious issue of prescription drug abuse in Orange County through law enforcement, healthcare and pharmacies, prevention education, and public policy; and

(h) 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 and certain dangerous prescription drugs via medical practitioners operating in pain management clinics or facilities; and

(i) 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

(j) The negative adverse secondary impacts associated with certain pain management clinics includes the congregation of drug users and drug addicted persons outside of pain management clinics in a manner that has a negative effect on the willingness of residents to patronize nearby business and which disturbs nearby residents all hours of the day but particularly in the early morning and late evening hours thus disrupting other businesses and disturbing the peace and quiet of affected parts of the community; and

(k) It is not the intent of this Ordinance to interfere with the legal and safe prescription, dispensation, or use of controlled substances. It is the excessive distribution of a narrow class of opiate analgesic prescription drugs that are Schedule II and III controlled substances (except Buprenorphine (Subutex®) and Buprenorphine-naloxone (Suboxone®), which are used for treating addiction) that this Ordinance seeks to regulate; and

(l) Under its home rule authority, the City of Winter Park can pass additional legislation to further regulate pain management clinics and pharmacies as long as these additional regulations are not preempted in the law and are not inconsistent with the statutory provisions.

Sec. 54-3. Definitions.

For purposes of this article, the following terms, whether appearing in the singular or plural form, shall have the following meanings. All other terms used in this article shall have the meaning provided in Chapter 2011-141, Laws of Florida, as it may be amended from time to time.

Acute Pain means the normal, predicted, physiological response to an adverse chemical, thermal, or mechanical stimulus and is associated with

surgery, trauma, or illness. It is generally short-lived. Acute Pain responses may vary between patients and between pain episodes within an individual patient. Acute Pain episodes may be present in patients with Chronic Pain.

Chronic Pain means pain which includes one or more of the following characteristics: (a) the pain persists beyond the usual course of a disease that is the cause of the pain; (b) the pain persists beyond the expected time for healing from an injury or trauma that is the cause of the pain; or (c) the pain is associated with a long-term incurable or intractable medical illness or disease and is not amenable to routine pain control methods.

Controlled substance means any substance named or described in Schedules I-V of *Section §893.03, Florida Statutes*.

Dangerous Drugs means a controlled substance, specifically an opiate analgesic, listed in Schedule II and Schedule III, in *Section 893.03, Florida Statutes*, but not including Buprenorphine (Subutex®) and Buprenorphinenaloxone (Suboxone®).

Health Care Physician or Physician means any practitioner who is subject to licensure or regulation by the Florida Department of Health under *Chapters 458 (physician) or 459 (osteopathic physician), Florida Statutes*.

Pain means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Categories of pain include Acute Pain or Chronic Pain.

Pain Management means the use of pharmacological and non-pharmacological interventions to control a patient's identified pain. Pain Management often extends beyond pain relief, encompassing the patient's quality of life, ability to work productively, to enjoy recreation, and to function normally in family and society.

Pain Management Clinic means any privately-owned clinic, facility or office, whatever its title, including but not limited to a "wellness center", "urgent care facility", or "detox center," which has at least one of the following characteristics:

1. Where a physician practices who issues prescriptions for a Dangerous Drug to more than twenty (20) patients in a single day;
2. It holds itself out through a sign or advertising in any medium as being in business to prescribe or dispense pain medication, whether for Acute Pain or Chronic Pain;

3. It holds itself out through a sign or advertising in any medium as being in business to provide services for the treatment or management of pain and where the services are also accompanied with the prescription or dispensing of a Dangerous Drug for the treatment of pain, whether Acute Pain or Chronic Pain; or

4. It meets the definition of Pain Management Clinic in *Section 458.3265, Florida Statutes*, as may be amended from time to time, or is registered as a Pain Management Clinic with the State.

Exceptions. There is an affirmative defense that a business is not a Pain Management Clinic if it has at least one of the following characteristics:

1. Licensed as a hospital or other licensed facility pursuant to *Chapter 395, Florida Statutes*, as may be amended;

2. The majority of the physicians who provide services in the clinic primarily provide surgical services;

3. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

4. Does not prescribe or dispense controlled substance for the treatment of pain; or

5. Operated for the sole purpose of service a governmental entity.

Pharmacist means any person licensed pursuant to *Chapter 465, Florida Statutes*, to practice the profession of pharmacy.

Pharmacy means the same as that term is defined in *Section 465.003, Florida Statutes*, as may be amended from time to time, and includes community pharmacy, internet pharmacy, and special pharmacy, but does not include institutional pharmacy or nuclear pharmacy, as each of those terms are used in that section.

Physician Primarily Engaged in the Treatment of Pain means a physician who prescribes or dispenses Dangerous Drugs when a substantial portion of the patients seen are prescribed or dispensed Dangerous Drugs for the treatment of chronic pain. For purposes of this definition, the term "substantial portion" means more than insignificant or incidental portion. The term "substantial portion" does not necessarily mean a majority or predominant amount.

Sec. 54-4. Registration and Operational Regulations for Pain Management Clinics.

(a) *Registration Required.* Upon adoption of this Ordinance and annually thereafter, Pain Management Clinics shall register with the City by completing and submitting to the City Manager, or his/her designee, a registration form that is obtained from that official.

(b) *Persons Responsible.* A physician shall be designated as responsible for complying with all requirements related to registration and operation of the Pain Management Clinic. The designated physician and all other persons operating the Pain Management Clinic shall ensure compliance with the following regulations. Failure to so comply shall be deemed a violation of this Ordinance and shall be punishable as provided in Section 54-10.

(c) *Supplemental Regulations.* All registered Pain Management Clinics shall be subject to the supplemental regulations provided in this subsection.

(d) *Display of licenses.* Any Pain Management Clinic shall be validly registered with the State of Florida, if required, and with the City, and shall prominently display in a public area near its main entrance copies of all state licenses, City licenses, and Local Business Tax Receipt, and the name of the owner and designated physician responsible for compliance with state and city law. A Pain Management Clinic shall register with the City by completing and submitting to the City Manager, or his/her designee, a registration form that is obtained from that official.

(e) *Controlled Substances.* The on-site sale, provision, or dispensing of controlled substances at a Pain Management Clinic shall be prohibited except as is specifically set forth in applicable federal or state law.

(f) *Alcoholic beverages.* Alcoholic beverages shall be prohibited from being consumed or served on the premises, including in the parking areas, sidewalks, or adjacent right-of-way.

(g) *Adequate inside waiting area required.* No Pain Management Clinic shall provide or allow outdoor seating areas, queues, or customer waiting areas. All activities shall be conducted within the building and adequate indoor waiting areas shall be provided for all patients and business invitees. The Pain Management Clinic shall not direct or encourage any patient or business invitee to stand, sit (including in a parked car), gather, or loiter outside of the building where the clinic operates, including in any parking area, sidewalk adjacent, right-of-way, or neighboring property for any period of time longer than that reasonably required to arrive and depart. The Pain Management Clinic shall post a conspicuous sign stating that no loitering is allowed on the property.

(h) *Operating hours.* A Pain Management Clinic may operate only Monday through Friday and only during the hours of 7:00 a.m. to 7:00 p.m. Exception – It is an affirmative defense that the business was open after the above-stated hours for a bona fide medical emergency reported by an established patient who had been previously treated at that Pain Management Clinic.

(i) *Monthly business records.* Each business day a Pain Management Clinic shall record, and shall provide to the City Manager or his or her designee on a monthly basis, by the fifth day of each calendar month, a sworn summary of certain limited information from the prior calendar month that is prepared by the medical director and/or the person in charge of prescribing the drugs that month. To the extent such information is not otherwise required to be maintained by any other law, the back-up for the required monthly summary shall be maintained by the Pain Management Clinic for at least 24 months. The monthly summary shall include the following information for the previous calendar month:

(1) The total number of prescriptions written for Dangerous Drugs listed separately by each physician;

(2) The total number of persons seen by the Pain Management Clinic;

(3) The state of residence of each person to whom Dangerous Drugs were prescribed or dispensed; and

(4) A log of all attempts, whether successful or unsuccessful, to access and revise the state-maintained Prescription Drug Monitoring Program.

(i) *Personnel Records.* A Pain Management Clinic shall maintain personnel records for all owners, operators, employees, workers, and volunteers on site at the Pain Management Clinic, and make those records available during any inspection. The Pain Management Clinic shall forward a sworn personnel record containing items (1), (2) and (3), below to the City Manager, or his/her designee, on a monthly basis by the fifth day of each calendar month for the previous calendar month. Personnel records shall, at a minimum, contain the following information about each of the above-described persons present for any day in the previous calendar month:

(1) name and title;

(2) current home address, telephone number, and date of birth;

(3) a state or federally-issued driver's license or other identification number;

(4) a copy of a current driver's license or a government issued photo identification; and

(5) a list of all criminal convictions (if any), whether misdemeanor or felony for all persons hired in the previous calendar month, to be updated annually.

(k) *Compliance with other laws.* A Pain Management Clinic

shall at all times be in compliance with all federal and state laws and regulations and the City of Winter Park City Code.

Sec. 54-5. Requirements for New Pain Management Clinics.

(a) *Intent.* It is the intent of this article that the lawful use of any building, structure, or land existing at the time of adoption of this article may be continued although such use, building or structure does not conform with the provisions of this article provided the following conditions in the subsequent sections of this article are met.

(b) *Zoning and Location.* Any new Pain Management Clinic shall only be permitted within the Limited Industrial and Warehouse (I-1) Zoning District, and shall be prohibited as a home occupation. Any new Pain Management Clinic applicant shall complete the appropriate building permit or Use permit applications and submit these application(s) to the City Building Division for review and approval prior to issuance of any permits.

(c) *Separation distances.* A new Pain Management Clinic shall not co-locate on the same property as a pre-existing Pharmacy. Furthermore, a new Pain Management Clinic shall not operate within one thousand (1,000) feet of any pre-existing pharmacy; school; as that term is defined in *Sections 1002.01 or 1003.01, Florida Statutes*, as it may be amended; day care center; or home; or religious institution. Distance requirements shall be documented by the applicant and submitted to the Building Division with the application. All distance requirements pertaining to Pain Management Clinics shall be measured by drawing a straight line from the nearest property line of the pre-existing use to the nearest property line of the proposed use. Applicant may request a variance from the requirements of this paragraph as provided in Section 58-92 of this Code.

(d) *Parking.* Any parking demand created by a Pain Management Clinic shall not exceed the parking spaces located or allocated on site, as required by the City's parking regulations. An applicant shall be required to demonstrate to the appropriate City staff that on-site traffic and parking attributable to the Pain Management Clinic will be sufficient to accommodate traffic and parking demands generated by the Pain Management Clinic, based upon current traffic and a parking study prepared by a certified professional. Traffic and parking analyses shall be predicated in part upon traffic and parking impacts from other existing pain management clinics in Florida but shall in no case be less than one (1) space per 100 sq. ft. of gross floor square feet as defined in Section 58-95 of this code. The source of any such information shall be provided to the City for purposes of verification. City staff shall be required to verify the information contained in traffic and parking study(ies) with the appropriate official(s) of the local government(s) where the comparable information is derived. The owner of the Pain Management Clinic shall be responsible for ensuring that there is no queuing of vehicles in the public right-of-way.

Sec. 54-6. Landlord Responsibility.

(a) Any landlord, leasing agent or owner of property upon which a pain management clinic operates who knows, or in the exercise of reasonable care should know, that a Pain Management Clinic or Pharmacy is operating in violation of the Winter Park City Code, or applicable Florida law, including the rules and regulations promulgated by the Department of Health, Board of Medicine, or Board of Osteopathic Medicine, must prevent, stop, or take reasonable steps to prevent the continued illegal activity on the leased premises.

(b) Landlords who lease space to a Pain Management Clinic or Pharmacy after the effective date of this article must expressly incorporate language into the lease or rental agreement stating that failure to comply with the Winter Park City Code is a material breach of the lease and shall constitute grounds for termination and eviction by the landlord.

Sec.54-7. Certification Affidavit by Applicants for Related

Uses.

(a) *Certification Affidavit by Applicants for Related Uses.* Any application for a business certificate under Chapter 94, Article II as a pain management clinic as defined in section 54-3, shall be accompanied by an executed affidavit certifying registration with the State of Florida, and the City of Winter Park as a Pain Management Clinic. The failure of an applicant to identify a business in the application for a business certificate as a pain management clinic, which meets the definition of pain management clinic as defined in section 54-3, will result in the immediate expiration of the business certificate and immediate ceasing of all activity conducted in the pain management clinic.

(b) Any applicant's application for a business certificate and executed affidavit relating to use as a Pain Management Clinic, where applicable, shall be provided to the City Building Division at the time of the proposed use.

Sec. 54-8. Regulation of Pharmacies.

(a) All Pharmacies shall be subject to the following supplemental regulations:

(1) *Identification Requirement.* Prior to filling or dispensing any prescription for a Dangerous Drug, for or to a person for whom verification of insurance or health plan coverage through a state-licensed insurance company has not been done, a Pharmacist or the Pharmacist's agent shall require and photocopy, scan, or otherwise digitally record at least one (1) form of identification of the patient for whom the medication is prescribed or, if a minor, the minor's parent or guardian. Identification shall be also obtained and recorded in the same manner from the person who picks up or obtains the Dangerous Drugs, if not the same person for whom the Dangerous Drugs are prescribed. Such identification shall consist of an original or certified copy of one of the following and must include a photograph of the applicant and have both the applicant's full name and date of birth:

- (a) Current driver's license;
- (b) Current federal or state issued identification card;
- (c) United States valid Passport or Passport Card;
- (d) Unexpired foreign passport with valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting applicant's most recent admittance to the United States;
- (e) Valid United States Citizenship and

Immigration Services (USCIS) documents (Certificate of Naturalization, Certificate of Citizenship, and/or Permanent Resident Card);

(f) Military ID or dependent card with photograph; or

(g) State or Federal government employee identification card with name and photograph and/or physical description with or without a date of birth.

(2) *Verification of Prescription.* Prior to filling a prescription for a Dangerous Drug about which the Pharmacist has any reasonable cause to doubt the validity of the prescription, a Pharmacist or the Pharmacist's agent shall personally contact the prescribing physician or the prescribing physician's agent in order to verify the prescription. Based on the contact, the Pharmacist or pharmacist's agent shall document, in writing, the date and name of contact.

(3) *Records.* A Pharmacy shall keep records of all prescriptions filled in compliance with *Section 893.07, Florida Statutes*, for no less than two (2) years, and records of Dangerous Drug prescription fills shall be made available to law enforcement or code enforcement within seventy-two (72) hours of the request and which shall include:

(a) All information required by *Section 893.07, Florida Statutes*;

(b) Copies of all personal identification obtained by the Pharmacist in compliance with this Article; and

(c) If applicable, all written verification records required in this Article.

In the event that a records request is made by code enforcement personnel, the Pharmacist shall redact all identifying information of the patient or person who requested medication before providing the requested records in compliance with this section; provided however, this requirement to redact does not apply to lawful requests by law enforcement personnel.

(4) *Pharmacist compensation.* It shall be unlawful to pay any Pharmacist a bonus, incentive compensation, or reward solely for filling a prescription for a specific Dangerous Drug.

(5) *Compliance with other laws.* A Pharmacy shall, at all times, be in compliance with all federal and state laws and regulations and the Winter Park City Code.

(b) *Separation distances.* A new Pharmacy shall not co-locate on the same property as a pre-existing Pain Management Clinic; provided, however, that an Applicant for a new Pharmacy may request a variance from the requirements of this paragraph as provided in Section 58-92 of this Code.

Sec. 54-9. Prescription Drug Monitoring Program.

(a) *Requirement of prescribing physician or physician's agent to check Prescription Drug Monitoring Program.* Medication shall only be prescribed on the business premises and shall only be prescribed during regular office hours. Within 24 hours prior to prescribing any Dangerous Drug to a patient, the prescribing physician or physician's agent shall access the information for the purpose of reviewing the patient's controlled drug description history in the Prescription Drug Monitoring Program described at *Section 893.055, Florida Statutes.*

(b) *Requirement of pharmacist or pharmacist's agent to check Prescription Drug Monitoring Program.* Prior to dispensing any Dangerous Drug for or to a person for whom verification of insurance or health plan coverage through a state-licensed insurance company has not been done, the dispensing Pharmacy shall access the information in the Prescription Drug Monitoring Program for the purpose of reviewing the patient's controlled drug history and shall report the Dangerous Drug dispensed and to whom the Dangerous Drug will be dispensed in the Prescription Drug Monitoring Program described at *Section 893.055, Florida Statutes.*

(c) *When the Prescription Drug Monitoring Program is not available.* Compliance with the requirements of sub-sections (a) and (b) is not required before prescribing or dispensing Dangerous Drugs if the Prescription Drug Monitoring Program is not available, or does not reasonably respond, and three good-faith but unsuccessful attempts have first been made to access and review the state-maintained Prescription Drug Monitoring Program. A record of the dates and times of such attempts to access the state maintained Prescription Drug Monitoring Program shall be kept and maintained for 24 months. A Pain Management Clinic shall also include such log information with the daily summary record required in this Ordinance.

Sec. 54-10. Penalties.

Any person violating any of the provisions of this Article shall be deemed guilty of an offense punishable as provided in section 1-7, Article II Code Enforcement Citations, revocation of a business certificate and code enforcement violations referred to the Code Enforcement Board.

Section 3. Amendments to Zoning Code. The Winter Park Land Development Code, Article III, Chapter 58 is hereby amended as follows:

Section 58-78(b) is amended to add new paragraph 13, Pain Management Clinics under Permitted Uses.

Section 58-86(b) is amended to add under "Specific Requirements," new paragraph 28 to read:

Section 58-86.

(b) Specific Requirements for various uses and buildings.

(28)_ Pain Management Clinics: one parking space for each 100 square foot of gross floor space in the building.

Section 58-95 is amended by adding a new definition: *Pain Management Clinic* means as defined in Section 54-3 of this Code.

Section 4. Chapter 94, Article II, Section 94-31 "Definitions" under "Local business tax" is amended to read as follows: Local business tax receipt means and includes the certificate or document to be issued by the city business tax officer evidencing payment of the business tax initially imposed and required for the issuance thereof, and shall be called "business certificate" in city applications and documents under this Article.

Section 5. Conflicts. All ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.

Section 6. 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 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

ADOPTED by the City Commission of the City of Winter Park, Florida, in a regular meeting held on the 23rd day of April, 2012.

Attest: *Michele Bernhart*
FOR Cynthia S. Bonham, City Clerk

Kenneth W. Bradley
Kenneth W. Bradley, Mayor