

ORDINANCE 435

AN ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION OR THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OF “PAIN CLINICS” AND “PAIN MANAGEMENT CLINICS” FOR ONE HUNDRED AND EIGHTY (180) DAYS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166 of the Florida Statutes, the City of Orange City, hereinafter 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; and

WHEREAS, the public health, safety and welfare is a legitimate public purpose of the City; and

WHEREAS, the City has seen an increase in the number of individuals or entities interested in opening “pain clinics” and “pain management clinics”, hereinafter “pain clinics”, in and around the City; and

WHEREAS, Florida Statutes, Section 893.055, Prescription Drug Monitoring Program, effective until December 1, 2010, has not been funded by the State of Florida, 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, the U.S. Department of Health and Human Services has released data showing prescription drug deaths are now the fourth leading cause of death in the United States, after heart disease, cancer and stroke; and

WHEREAS, in the State of Florida in 2006 there were 2,780 lethal dose reports of prescription drugs, in 2007 there were 3,317 lethal dose reports of prescription drugs, in 2008 there were 3,750 lethal dose reports of prescriptions drugs and in 2008 an additional 6,286 reports of non-lethal prescription drugs detected in deceased persons that may have been found in combination with other substances to be lethal; and

WHEREAS, burglaries and robberies in the areas where pain 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, 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 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 associates with certain pain clinics create an urgent situation necessitating immediate investigation into regulation of such clinics in the City; and

WHEREAS, under its home rule authority, the City can pass additional legislation to further regulate pain 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 180 days on the issuance of business tax receipts for “pain clinics” and “pain management clinics”, the City will have the opportunity to research and study various regulatory options; and

WHEREAS, the City Council finds it is in the best interest of the citizens of the City of Orange 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 Council deems it is in the best interest of the City to enact an ordinance regulating pain clinics.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City:

SECTION 1. Definitions. For the purposes of this Ordinance, “pain clinic” and “pain management clinic” are defined as follows:

- a. any clinic, medical office or medical practitioner’s office that is not affiliated with a hospital, hospice or other facility for treatment of terminally ill in Volusia County, Florida; and
- b. the primary business purpose of such clinic, medical office or medical practitioner’s office is to prescribe or dispense pain medication, identified in

Schedules 11, 111, and 1V in Sections 893.03, 893.035 or 893.0355, Florida Statutes, to individuals, or

c. the clinic, medical office or medical practitioner's office advertises as being in business to prescribe pain medication, as defined above in b., and which may or may not provide dispensing of pain medication on site.

d. A clinic, medical office or medical practitioner's office, that is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescriber dispensed controlled substance or medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain and not related to cancer, which persists beyond the usual course of the disease of the injury that is the cause of the pain for more than 90 days after surgery.

A moratorium on the submission, process and issuance of business tax receipts for the operation of pain clinics and pain management clinics, as defined herein, is hereby established for a period of one hundred and eighty (180) days from the effective date of this ordinance to research the nature and scope of possible measures of mitigation and regulation of pain clinics and pain management clinics.

SECTION 2. Existing Businesses: 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 3. New Business Tax Receipts. Applications for business tax receipts for operation of pain clinics and pain management clinics, as defined herein, received after the date of advertisement of the first reading of this Ordinance shall be held in abeyance until the conclusion of the moratorium period.

SECTION 4. Renewal of Business Tax Receipts. The Director of the Developmental Services Department, 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 has taken adequate precautions to mitigate the potential for abuse of prescription drugs.

SECTION 5. Extension of Time. Notwithstanding the time limit on the moratorium herein established, in the event the City Council finds that additional time is needed for staff to conclude its review of the problems associated with pain clinics and pain management clinics, as defined herein, within the City and the drafting of regulations of those businesses then the term of this Ordinance may be extended by Council action for an additional one hundred and eighty (180) days.

SECTION 8. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

ROLL CALL VOTE AS FOLLOWS:

First Reading, this 9th day of November, 2010.

Gary A. Blair	<u>yes</u>	Jeff Allebach	<u>yes</u>
Tom Laputka	<u>yes</u>	Tom Abraham	<u>yes</u>
Anthony Pupello	<u>yes</u>	O. William Crippen, Vice Mayor	<u>yes</u>
Harley Strickland, Mayor	<u>yes</u>		

ROLL CALL VOTE AS FOLLOWS:

Second Reading, this 14th day of December, 2010.

Gary A. Blair	<u>yes</u>	Jeff Allebach	<u>yes</u>
Tom Laputka	<u>yes</u>	Tom Abraham	<u>yes</u>
Anthony Pupello	<u>yes</u>	O. William Crippen, Vice Mayor	<u>yes</u>
Harley Strickland, Mayor	<u>yes</u>		

PASSED and ADOPTED this 14th day of December, 2010.

ATTEST:

Deborah J. Renner
Deborah J. Renner, CMC, City Clerk

AUTHENTICATED:

Harley Strickland
Harley Strickland, Mayor

Approved as to form and legal sufficiency:

William E. Reischmann, Jr.
William E. Reischmann, Jr., City Attorney