

**ORDINANCE 2011-22**  
(Moratorium – New Pain Management Clinics)

**AN ORDINANCE OF THE CITY OF LAKE WALES, FLORIDA, IMPOSING A TEMPORARY MORATORIUM ON THE PERMITTING OR APPROVAL OF NEW PAIN MANAGEMENT CLINICS WITHIN THE CITY OF LAKE WALES; ADOPTING FINDINGS; PROVIDING DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, a pattern of purchase, illegal distribution and personal abuse of substances controlled by federal and/or state law has been linked in large part to certain pain management clinics or medical facilities operating in Florida;

**WHEREAS**, the illegal activity involving substances controlled by federal and/or state law associated with such clinics has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of the residents of the City of Lake Wales; and

**WHEREAS**, the Florida Legislature has similarly identified concerns regarding the increased abuse of substances controlled by federal and/or state law and higher 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 has adopted legislation requiring operators of such clinics or facilities, or physicians and other medical practitioners providing prescriptions for and/or dispensing controlled substances through such clinics, facilities or offices to register with the State Department of Health in order to conduct such business; and

**WHEREAS**, many counties and municipalities in Florida have established moratoria on the issuance of government licenses, permits, approvals, or the like required for the development, use or operation of new pain management clinics in order to limit or curb 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 existence of moratoria in other counties and municipalities may increase the number of pain management clinics seeking to operate in the City of Lake Wales; and

**WHEREAS**, the City Commission finds that, due to the significant, potential negative impacts associated with certain pain management clinics, it is necessary to impose a temporary moratorium on new pain management clinics in the City of Lake Wales in order to allow time to develop regulations to prevent or mitigate the incidence of such potential negative impacts; and

**WHEREAS**, the City Commission finds that the adoption of this Ordinance is necessary in order to protect the public health, safety and welfare;

**NOW THEREFORE BE IT ENACTED** by the City Commission of the City of Lake Wales, Polk County, Florida:

**SECTION 1:**            **Adoption of Findings.** The foregoing findings are true and correct and are hereby made a part hereof and incorporated herein by reference.

**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* is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain or for a period of more than 90 days after surgery.
- b. *Pain Management Clinic* means any privately owned clinic, facility, or office which advertises in any medium concerning the availability of any type of pain-management services or employs a physician or osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing substances controlled by federal and/or state law, and which clinic is required to register with the Florida Department of Health pursuant to Sections 458.3265 or 459.0137, Florida Statutes, but the term shall not include:
  1. A clinic licensed as a facility pursuant to Chapter 395, Florida Statutes;
  2. A clinic where the majority of the physicians who provide services in the clinic primarily provide surgical services;
  3. A clinic that 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. A clinic that is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
  5. A clinic that does not prescribe or dispense substances controlled by federal and/or state law for the treatment of pain; or
  6. A clinic that is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3).

For the purposes of this definition, a physician, including an osteopathic physician, is considered to be primarily engaged in the treatment of pain by prescribing or dispensing substances controlled by federal and/or state law when the majority of the patients seen by such physician are prescribed or dispensed a substance controlled by federal or state law for the treatment or purported treatment of chronic nonmalignant pain.

**SECTION 3:**            **Moratorium.** No permits or approvals of any kind, including, without limitation, issuance of a business tax receipt, shall be granted and no


applications or business taxes shall be accepted or received for any new Pain Management Clinics within the incorporated limits of the City of Lake Wales for a period of one hundred and twenty (120) days from the effective date of this Ordinance, or until such time as the City Commission adopts new regulations governing Pain Management Clinics and expressly lifts the moratorium imposed herein, whichever occurs first. For the purposes of the moratorium hereby imposed, a Pain Management Clinic shall be considered "new" and shall not be permitted or approved, and shall not conduct business or otherwise operate, if any permit or approval, including, without limitation, a business tax receipt, required for the commencement of operations has not yet been obtained as of the effective date of this Ordinance.

**SECTION 4:** Penalties. Violations of this Ordinance by a business shall be punishable in accordance with Chapter 12 of the Lake Wales 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.

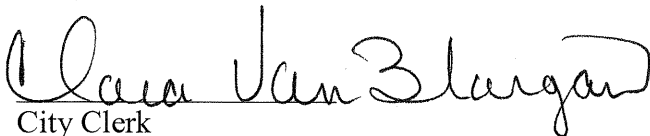
**SECTION 5:** Severability. If any word, sentence, clause, phrase or provision of this Ordinance, for any reason, is held to be unconstitutional, void, or invalid, the validity of the remainder of this Ordinance shall not be affected thereby.

**SECTION 6:** Effective Date. This Ordinance shall become effective immediately upon its passage.

CERTIFIED AS TO PASSAGE this 4 th day of October, 2011.

  
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Mayor

ATTEST:

  
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City Clerk