

**ORDINANCE NO. 03-2010**

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, DECLARING ZONING IN PROGRESS AND A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY PETITION FOR THE ESTABLISHMENT OF PAIN MANAGEMENT CLINICS AS DEFINED HEREIN; PROVIDING THAT ZONING IN PROGRESS AND THE MORATORIUM SHALL BE IN EFFECT FOR A PERIOD WHICH SHALL TERMINATE ON THE EFFECTIVE DATE OF THE TOWN'S ADOPTION OF LAND DEVELOPMENT REGULATIONS TO REGULATE PAIN MANAGEMENT CLINICS; PROVIDING FOR LEGISLATIVE FINDINGS, INTENT AND PURPOSE; PROVIDING FOR A DEFINITION OF PAIN MANAGEMENT CLINIC; PROVIDING FOR THE BOUNDARIES SUBJECT TO THE MORATORIUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in the Spring of 2009, the State Attorney's Office for the 17<sup>th</sup> Judicial Circuit in Broward County, Florida, issued an interim report entitled the "The Proliferation of Pain Clinics in South Florida" which established the following facts: (i) from August 2008 to November 2009, one new pain clinic is opened in Broward and Palm Beach counties every three days; (ii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the United States; (iii) in 2008, prescription drugs were attributed to an average of 13.5 deaths per day in Florida; and (iv) pain clinics are migrating north from Broward County; and

**WHEREAS**, the Town Commission has recently been made aware by news reports that a pattern of illegal drug use and distribution has been associated with some pain management clinics in south Florida, which dispense narcotic drugs on-site; and

**WHEREAS**, the *Miami Herald*, the *Sun Sentinel*, and the *Palm Beach Post* have published numerous newspaper articles in recent months describing the "pipeline" trafficking drugs from some south Florida pain management clinics to users from other states such as Kentucky, West Virginia and Ohio; and

**WHEREAS**, the threat of illegal narcotic activity and increased crime associated with pain management clinics is significant and could undermine the economic health of the Town's development and redevelopment efforts; and

**WHEREAS**, the Town Commission hereby directs its staff to analyze the effects of pain management clinics in the Town, to analyze whether additional standards should be incorporated into the Town's land development regulations and to evaluate the process for the issuance of development permits, business tax receipts, or other approvals regulating the location of pain management clinics within the Town which would further and promote the public health, safety, morals and general welfare; and

**WHEREAS**, Palm Beach County has enacted a moratorium pertaining pain management clinics in the unincorporated areas of the County, and as a result, the Town could become a target for the location of pain management clinics in northern Palm Beach County because the unincorporated areas in the northern portion of Palm Beach County are not available for these uses during the moratorium period; and

**WHEREAS**, to provide the Town staff with sufficient time to undertake its analysis during the period of the County's moratorium, it is necessary to establish a Town moratorium which prohibits the granting of development permits, business tax receipts, or other approvals; and

**WHEREAS**, it is not the intent of this moratorium to interfere with legitimate medical clinics nor the legal use of controlled substances; and

**WHEREAS**, the Town Commission finds and declares a need to temporarily suspend the further issuance of development permits, business tax receipts, or other approvals for new pain management clinics seeking to develop or open for business within the Town until such time as the Town can review its land development regulations to specifically address the proliferation of pain management clinics;

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AS FOLLOWS:**

**SECTION 1: Legislative Findings, Intent and Purpose.** The Whereas clauses are incorporated herein, are true and correct, and represent the legislative findings of the Town Commission. It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents and businesses of the Town through the analysis of any impacts from pain management clinics and through consideration of criteria for the location of pain management clinic uses within the Town.

**SECTION 2: Definition.** For purposes of this Ordinance, "Pain management clinic" is defined as a 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 medications, and is required to register with the Florida Department of Health pursuant to Sec. 458.309 or Sec. 459.005, Fla. Stat. (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated 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.

**SECTION 3: Boundaries.** This Ordinance shall apply to all properties located within the boundaries of the Town of Lake Park.

**SECTION 4: Zoning in Progress and Moratorium Declared.** The Town Commission hereby imposes zoning in progress and a moratorium upon the application of any development permits, business tax receipts, or other approvals which might facilitate the opening or development of new pain management clinics, in whole or in part within the Town.

**SECTION 5. Repeal of laws in conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 6. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 7. Effective Date.** This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 17 day of February, 2010, the foregoing Ordinance, was offered by Vice-Mayor Carey, who moved its approval. The motion was seconded by Commissioner Daly and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>Absent</u>	_____

**PUBLISHED IN THE PALM BEACH POST THIS 21 DAY OF Feb., 2010**

Upon Second Reading this 3 day of March, 2010, the foregoing Ordinance, was offered by Commissioner Rumsey, who moved its adoption. The motion was seconded by Commissioner Osterman and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>Absent</u>	_____
VICE MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 03-2010** duly passed and adopted this 3 day of March, 2010.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois  
Mayor, Desca DuBois

ATTEST:

Vivian M. Lemley  
Town Clerk, Vivian M. Lemley  
(Town Seal)  
TOWN OF LAKE PARK  
FLORIDA

Approved as to form and legal sufficiency:

Thomas J. Baird  
Town Attorney, Thomas J. Baird