APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

DEC 0 6 2011

EFFECTIVE DATE
DEC 1 5 2011

ORDINANCE NO. 2011-19

AN ORDINANCE OF ORANGE COUNTY, FLORIDA RELATING TO PAIN MANAGEMENT CLINICS; AMENDING ARTICLE XIV, CHAPTER 2, ORANGE COUNTY CODE, RELATING TO PAIN MANAGEMENT CLINICS; ADOPTING FINDINGS; UPDATING DEFINITIONS; EXTENDING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR NEW PAIN MANAGEMENT CLINICS FOR 180 DAYS; PROVIDING THAT NO PAIN MANAGEMENT CLINIC MAY LIMIT ITS BUSINESS TO CASH ONLY; PROVIDING HOURS OF OPERATION FOR PAIN MANAGEMENT CLINICS; DIRECTING STAFF TO STUDY, ANALYZE AND REPORT TO THE BOARD ON ISSUES RELATING TO PAIN MANAGEMENT CLINICS; PROVIDING FOR PENALTIES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Orange County Sheriff's Office and the Metropolitan Bureau of Investigation for the Ninth Judicial Circuit have advised the Orange County Board of County Commissioners ("Board") that a pattern of illegal drug use and distribution has been linked in large part to certain pain management clinics operating in and around Orange County; and

WHEREAS, the illegal distribution of prescription drugs, increased crime associated with such activity, and the high number of deaths in Orange County relating to prescription drug abuse has created an urgent situation requiring immediate action to reduce the threat to the health, safety and welfare of county citizens; and

WHEREAS, 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 via medical practitioners operating in pain management clinics or facilities; and

WHEREAS, 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

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 creates an urgent situation necessitating immediate investigation into and potential regulation of such clinics in Orange County; and

WHEREAS, it is not the intent of this Ordinance to interfere with the legal prescription, dispensation, or use of controlled substances; and

WHEREAS, under its home rule authority Orange County 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, on December 7, 2010 the Board adopted a moratorium on the issuance of any new Business Tax Receipts for pain management clinics and to direct County staff to analyze the effects of pain management clinics on our community and to prepare recommendations to better promote, protect and improve the health, safety and welfare of the citizens of the county by local regulation of pain management clinics and to restrict cash only operations and hours of operation of existing clinics through the period of the moratorium; and

WHEREAS, during the period of the moratorium, Mayor Teresa Jacobs appointed a Task Force to provide recommendations to the Board on reducing the illegal distribution of prescription drugs and reducing prescription drug abuse in our community;

WHEREAS, the Task Force has recommended and the Board finds that the moratorium shall be extended an additional 180 days or until such time as the Task Force recommendations can be adequately vetted by the Board, whichever is earlier.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. **Recitals.** The foregoing **"WHEREAS"** clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Article XIV, Chapter 2, Orange County Code of Ordinances, consisting of sections 2-461 through 2-467, is hereby amended as follows with underlines showing new text and strikethroughs showing deletions.

> **Sec. 2-461. Title.** This Ordinance shall be known as the "Chad Phillips Act."

Sec. 2-462. Definitions.

For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings. Where reference is made to Florida Statutes, the definition is that found in Florida Statutes, as the definition may be amended from time to time.~~:~~

Chronic nonmalignant pain means pain unrelated to cancer or rheumatoid arthritis~~,~~ which persists beyond the usual course of the disease or injury that is the cause of the pain~~,~~ ~~for~~ or more than ninety (90) days after surgery.

Controlled substance is defined as in section 893.02, Florida Statutes, and means a controlled substance listed in Schedules I to V in section 893.03, Florida Statutes.

Pain management clinic ~~means any 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 medication~~ has the meaning ascribed in sections 458.3265 or 459.0137, Florida Statutes, as applicable, and is a clinic that is required to register with the Florida Department of Health pursuant to sections 458.3265 or 459.0137, Florida Statutes~~, as may be amended from time to time. *Pain management clinic* does not include a clinic:~~

~~1. Licensed as a facility pursuant to Chapter 395, Florida Statutes, as may be amended;~~

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

~~3. 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 dollars;~~

~~4. Affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;~~

~~5. That does not prescribe or dispense controlled substances for the treatment of pain; or~~

~~6. Owned by a corporate entity exempt from federal taxation under 26 U.S.C. 501(c) (3) or (4) as may be amended~~.

~~7. *Physician primarily engaged in the treatment of pain* means a physician who prescribes or dispenses controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain.~~

Sec. 2-463. Moratorium.

A. Beginning on December 15, 2011~~2010~~, a moratorium shall exist for one hundred eighty (180) days ~~year~~ and expire on June 12, 2012~~December 14, 2011~~, or sooner as provided herein, during which time the Tax Collector shall not issue any new Local Business Tax Receipt to any person for the purpose of engaging in, operating, or managing a pain management clinic. The Tax Collector is authorized to renew ~~or transfer~~ any Local Business Tax Receipt or Occupational License to any person for the purpose of engaging in or managing a pain management clinic existing on the effective date of this ordinance. However, if a pain management clinic is not registered with the Florida Department of Health, as required by sections 458.3265 or 459.0137, Florida Statutes, on December 15, 2010 through June 12, 2012, or until such time as this moratorium is lifted, whichever is earlier, the Local Business Tax Receipt or Occupational License is not eligible for renewal~~or transfer~~. Provided, however, that any pain management clinic in unincorporated Orange County which holds a valid Local Business Tax Receipt or Occupational License on the effective date of this ordinance that seeks to relocate its existing clinic to a different address within unincorporated Orange County shall be authorized to transfer its Local Business Tax Receipt or Occupational License for this limited purpose.

B. The moratorium shall expire upon the earlier of the following:

1. On June 12, 2012~~December 14, 2011, one year from the effective date of this Ordinance~~;

2. The effective date of an ordinance, adopted by the Board of County Commissioners, to address drug use and distribution associated with pain management clinics which dispense narcotic drugs on site in Orange County; or

3. At such time as the Board of County Commissioners receives a report from County staff on issues relating to pain management clinics and votes by majority vote to repeal this moratorium.

C. If, during the period of this moratorium, an application is made for issuance of a Local Business Tax Receipt for the operation of any of the following categories, which the applicant represents at the time of application, is not being operated and will not be operated during the period of term covered by the Local Business Tax Receipt as a pain management clinic, the applicant, as a condition of issuance of the Local Business Tax Receipt, shall execute and deliver to the Tax Collector an affidavit confirming such representation. If, during the time covered by the Local Business Tax Receipt, the clinic, facility or office is found to be, in fact, operating as a pain management clinic, the Local Business Tax Receipt shall be subject to immediate suspension or revocation in proceedings before the Code Enforcement Special Magistrate, in addition to any other civil or criminal remedies or penalties available under local, county, state, and federal laws. Failure or refusal of applicant to execute and deliver the above-described affidavit shall result in a denial of the issuance of the Local Business Tax Receipt. An executed affidavit shall accompany an application for a Local Business Tax Receipt in all of the following categories:

Local Business Tax Receipt Category Number	**Description**
2711	Amusement Center
3001	Physician
3005	Dentist
3011	Massage Therapist (state certified)
3012	Chiropractor
3014	Ophthalmologist

3016	Psychologist
3020	Miscellaneous professional
3100	Miscellaneous
3110	Consulting
3200	Retail store
3502	Wholesale
5000	Business

Sec. 2-464. No Cash Only.

During the moratorium established herein, no pain management clinic in operation as of December 15, 2010 through June 12, 2012, or until such time as this moratorium is lifted, whichever is earlier, shall limit patient payment options to cash only.

Sec. 2-465. Hours of Operation.

During the moratorium established herein, the hours of operation of a pain management clinic in operation as of December 15, 2010 through June 12, 2012, or until such time as this moratorium is lifted, whichever is earlier, shall be limited to 7 a.m. to 9 p.m. of the same day.

Sec. 2-466. Staff Report.

~~A.~~ This moratorium has been established and is extended for the minimum time period necessary for County staff to analyze the effects and impacts of pain management clinics in Orange County; analyze the criteria for additional standards needed, if any, under zoning, land use, land development, and general police power regulations in connection with the issuance of any development permits, business licenses, business tax receipts, or approvals for pain management clinics within the County; analyze any new laws regarding pain management clinics enacted by the Florida Legislature; complete an analysis of illegal drug use, distribution patterns, and other public health, safety and welfare issues that are associated with some pain management clinics that dispense narcotics on site; and, to make recommendations to the Board of County Commissioners regarding whether there is a need to enact an ordinance regulating pain management clinics so as to better promote the health, safety and general welfare of the citizens of the County.

~~B. County staff is directed to provide a report to the BCC of its findings and recommendations by not later than July 12, 2011.~~

Sec. 2-467. Penalties.

Unless as otherwise provided herein, violations of this Ordinance shall be punishable in accordance with Section 1-9 of the Orange County Code of Ordinances. In addition, the County may bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

Section 3. **Effective Date.** This Ordinance shall become effective on December 15, 2011.

ADOPTED THIS 6th DAY OF DECEMBER, 2011.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs
County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

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