

ORDINANCE NO. 2010-32

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO PAIN CLINICS, PAIN MANAGEMENT CLINICS, AND CASH ONLY PHARMACIES, ENACTING A MORATORIUM ON THE ISSUANCE OF BUSINESS TAX RECEIPTS FOR THE OPERATION OF "PAIN CLINICS, PAIN MANAGEMENT CLINICS AND CASH ONLY PHARMACIES" IN THE TOWN OF MALABAR FOR A PERIOD OF ONE HUNDRED EIGHTY (180) DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2, The Florida Constitution, and Chapter 166, Florida Statutes, Town of Malabar is authorized to protect the public health, safety, and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, protection of the public health, safety, and welfare is a legitimate public purpose recognized by the courts of Florida; and

WHEREAS, there has been a recent proliferation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, the Town of Malabar does not currently regulate Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, various studies and reports have been conducted concerning the Proliferation of Pain Clinics in Florida, and in 2008, prescription drugs were attributed to an average of nearly 13½ deaths per day in Florida; and

WHEREAS, the Town of Malabar has received applications for Pain Management Centers and Cash Only Pharmacies as defined herein; and

WHEREAS, reports have found that in the areas where Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies are located, burglaries, robberies, drug trafficking in prescription drugs, street level sales of prescription drugs, identity theft, and organized criminal activities have all increased; and

WHEREAS, Section 893.055, Florida Statutes, establishes the Prescription Monitoring Program in Florida, which is designed to provide a comprehensive electronic database system of controlled substance prescriptions; however, the program does not go into effect until December 1, 2010; and

WHEREAS, the Town Council of the Town of Malabar believes that by establishing a moratorium for a period of one hundred eighty (180) days on the issuance of Business Tax Receipts for Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies in the Town of Malabar, the Town Council will have the opportunity to research the nature and scope of possible measures of mitigation and regulation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies; and

WHEREAS, the Town Council of the Town of Malabar deems it in the best interests of the Town to enact an Ordinance regulating Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, and their impacts on the community.

NOW, THEREFORE, BE IT ENACTED by the Town of Malabar, Florida as follows:

Section 1. The foregoing “Whereas” clauses are hereby ratified and confirmed as being true and correct and incorporated herein by reference.

Section 2. For the purposes of this Ordinance, “Pain Clinics” and “Pain Management Clinics” shall mean any clinic, medical office, or medical practitioner’s office that is not affiliated with a hospital, hospice, or other facility for the treatment of the terminally ill and having at least one (1) of the following criteria:

a. The primary business purpose of such clinic, medical office, or medical practitioner’s office is to prescribe or dispense pain medication, identified in Schedules II, III, and IV in Sections 893.03, 893.035, and 893.0355, Florida Statutes, such as, but not limited to, opioids, including fentanyl, hydrocodone, morphine, and oxycodone, to individuals; or b. The clinic, medical office, or medical practitioner’s office holds itself out through advertising as being in business to prescribe such pain medication, as described in subsection a. of the criteria above, and which may or may not provide dispensing of pain medication on site.

Section 3. For the purposes of this Ordinance, a “Cash Only Pharmacy” shall

mean a pharmacy that primarily dispenses medication in Schedule II, III, and IV in Sections 893.03, 893.035, and 893.0355, Florida Statutes, including but not limited to opioids, including fentanyl, hydrocodone, morphine, and oxycodone, to individuals for cash only and/or is not generally open and accessible to the general public.

Section 4. Applications for Business Tax Receipts for the operation of Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, as defined herein, received after the effective date of this Ordinance shall be held in abeyance until the expiration of the moratorium period.

Section 5. The emergency moratorium shall not affect any business currently operating within the Town of Malabar pursuant to a validly-issued Business Tax Receipt, as long as the business and property are in compliance with all applicable local, state, and federal laws.

Section 6. Notwithstanding the time limit on the moratorium herein established, in the event that the Town Council of the Town of Malabar finds that additional time is needed for staff to conclude their review of the problems and issues associated with Pain Clinics, Pain Management Clinics, and Cash Only Pharmacies, as defined herein, and to draft regulations of those businesses, then the term of their moratorium may be extended for an additional one hundred eighty (180) day period by subsequent Ordinance.

Section 7. SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determine shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

Section 8. EFFECTIVE DATE.

This ordinance shall become effective immediately upon its adoption after the second reading and public hearing.

This ordinance was moved for adoption by Council Member Rivet and was seconded by Council Member Borton and, upon being put to a vote, the vote was as follows:

Council Member Nancy Borton	Aye
Council Member Brian Vail	Aye
Council Member Steven (Steve) Rivet	Aye
Council Member Jeffrey (Jeff) McKnight	Aye
Council Member Marisa Acquaviva	Aye

This ordinance was then declared to be duly passed and adopted this 16th day of August, 2010.

TOWN OF MALABAR

Thomas M. Eschenberg

By Thomas M. Eschenberg, Chair

First Reading: 8/02/2010

Second Reading: 8/16/2010

ATTEST: (Seal)

Debby K. Franklin

Debby K. Franklin, Town Clerk/Treasurer

Approved as to Form and Content:

Karl W. Bohne, Jr.

Karl W. Bohne, Jr., Town Attorney