

EMERGENCY ORDINANCE NO. 1271

AN ORDINANCE OF THE CITY OF POLK CITY, FLORIDA, RELATING TO PAIN MANAGEMENT CLINICS; DECLARING AN EMERGENCY; PROVIDING FOR AND IMPOSING AN IMMEDIATE TEMPORARY MORATORIUM WITHIN THE JURISDICTIONAL LIMITS OF THE CITY OF POLK CITY, FLORIDA UNTIL MAY 31, 2011, ON THE FILING, PROCESSING OR ISSUANCE OF ANY AND ALL PERMITS OR OTHER APPROVALS FOR ANY NEW PAIN MANAGEMENT CLINICS WITHIN THE INCORPORATED LIMITS OF THE CITY OF POLK CITY; ADOPTING AND PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING 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 and in and around Polk County and the City of Polk City; and,

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 Polk City; 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 and 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, loitering by pain clinic customers while waiting in long lines to receive drugs and loitering in areas surrounding the clinics; and,

WHEREAS, the existence of moratoria in other counties and municipalities, in Polk County and municipalities in Polk County including Lakeland and Winter Haven may increase the number of pain management clinics seeking to operate in the City of Polk City; and,

WHEREAS, the City Council 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 Polk City in order to allow time to develop regulations to prevent or mitigate the incidence of such potential negative impacts; and,

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

WHEREAS, the adoption of this Ordinance is required to provide for the immediate preservation of the public welfare by preventing the proliferation of pain management clinics which will be contrary to the public health, safety and

welfare while the City determines how best to regulate pain management clinics through development and adopt of a future ordinance.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF POLK CITY, FLORIDA, AS FOLLOWS:

SECTION 1. ADOPTION OF FINDINGS. The above recitals represent the legislative findings of the City of Polk City, Florida, relative to the provisions of this Ordinance and are incorporated herein by reference.

SECTION 2. DECLARATION OF EMERGENCY. Pursuant to state law and based upon the Legislative Findings set forth in the above-stated Recitals, the City Council of Polk City hereby finds and declares that an emergency exists requiring immediate action by the City Council. By virtue of the threat to public health and safety by virtue of the threat to the City's financial health and home rule powers, it is necessary for the City to implement this moratorium, which can only be accomplished by the adoption of this Emergency Ordinance.

SECTION 3. DEFINITIONS. For the purposes of this Ordinance, the following terms, whether appearing in the singular or plural form, shall have the following meanings:

3.1 *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.

3.2 *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:

(a) A clinic licensed as a facility pursuant to Chapter 395, Florida Statutes;

(b) A clinic where the majority of the physicians who provide services in the clinic primarily provide surgical services;

(c) 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;

(d) A clinic that is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

(e) A clinic that does not prescribe or dispense substances controlled by federal and/or state law for the treatment of pain; or

(f) 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 4. MORATORIUM. There is imposed immediately upon the enactment of this Ordinance, from the effective date hereof, until May 31, 2010, a moratorium within the jurisdictional limits of the City of Polk City, Florida, on the filing, processing or issuance of any and all permits or approvals of any kind, including, without limitation, a business tax receipt, 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 Polk City until May 31, 2010, or until such time as the City Council 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 5. PENALTIES. Violations of this Ordinance shall be punishable in accordance with the Code of the City of Polk City. In addition, the City may bring any other action available at law or equity to penalize or enjoin violations of this Ordinance.

SECTION 6. CONFLICTS. All ordinances or parts of ordinances in express conflict with any of the provisions of this Ordinance are hereby repealed

SECTION 7. 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 8. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage.

INTRODUCED AND PASSED by the City Council of the City of Polk City, Florida, at regular session this ____ day of _____, 2010.

ATTEST:

APPROVED:

Patricia Jackson, City Clerk

Joe LaCascia, Mayor-Councilor

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney

STATE OF FLORIDA
COUNTY OF POLK

I, the undersigned duly appointed City Clerk of the City of Polk City, Florida, HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1271, as shown in the records of the city on file in the office of the City Clerk.

WITNESS my hand and the seal of the City of Polk City, Florida, this ____ day of _____, 2010.

Patricia Jackson, City Clerk