

ORDINANCE NO. 2011-39

**AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, PERTAINING TO PAIN CLINICS, PAIN MANAGEMENT CLINICS, AND CASH ONLY PHARMACIES, EXTENDING 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 Chapters 163 and 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 (hereinafter referred to at times as "Pain Management Clinics"); 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, including The Interim Report of the Broward County Grand Jury entitled "The Proliferation of Pain Clinics in South Florida" dated November 19, 2009 and in 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**, the Florida Legislature created Sections 893.055 and 893.0551, Florida Statutes, establishing 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**, in 2010 the Florida Legislature enacted further regulations concerning pain management clinics; and,

**WHEREAS**, the pharmaceutical database has not yet been implemented and there is legislation before the Florida Legislature to repeal the requirement to implement such a database; and

**WHEREAS**, the regulations created by the legislature in 2010 are in the process of being implemented; and,

**WHEREAS**, the results of these regulations on pain management clinics are too new to determine whether or not they have really addressed the problems that exist; and,

**WHEREAS**, due to the regulatory uncertainty Malabar staff recommends that no medical offices falling within the definition of a pain management clinic be approved for new business and tax receipt or be permitted to open or expand operations within the municipal limits of Malabar; and,

**WHEREAS**, the Town Council of the Town of Malabar believes that by extending 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.** Malabar extends the moratorium created by Ordinance 2010-32 prohibiting the approval of any applications related to business tax receipts for the operation of pain management clinics within municipal boundaries of Malabar so that Malabar can determine whether the regulations imposed by the State that are designed to curtail the abusive practices associated with pain management clinics as outlined in the Interim Report of the Broward County Grand Jury entitled "The Proliferation of Pain Clinics in South Florida" dated November 19, 2009 have sufficiently addressed those abusive practices to allow Malabar and the public to be comfortable that new or expanded pain management clinics are appropriate. The term of the moratorium shall be for one hundred eighty (180) additional days ending on January 3, 2012. During the term of the moratorium, applications related to business tax receipts for the opening or expansion of pain management clinics shall not be accepted by Malabar's staff for any level of review.

**Section 3.** Applications for Business Tax Receipts for the operation of Pain Management Clinics, and Cash Only Pharmacies, as defined herein and in Ordinance No. 2010-32, received after the effective date of this Ordinance shall be held in abeyance until the expiration of the moratorium period.

**Section 4.** 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 5.** 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 in Ordinance No. 2010-32, 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 6. 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 7. EFFECTIVE DATE.** This ordinance shall become effective immediately upon its adoption after the second reading and public hearing.

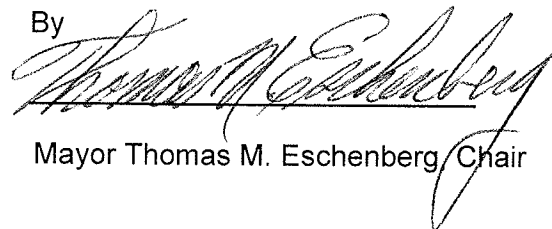
This ordinance was moved for adoption by Council Member Rivet and was seconded by Council Member Beatty and, upon being put to a vote, the vote was as follows:

Council Member Dave White	<u>Aye</u>
Council Member Carl Beatty	<u>Aye</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

This ordinance was then declared to be duly passed and adopted this 20th day of June, 2011.

**TOWN OF MALABAR**

By



Mayor Thomas M. Eschenberg, Chair

First Reading: 6/06/2011

Second Reading: 7/07/2011

ATTEST

Debby K. Franklin

Debby K. Franklin, C.M.C. Town Clerk/Treasurer

: (Seal)

Approved as to Form and Content:

Karl W. Bohne

Karl W. Bohne, Jr., Town Attorney