**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2010-002**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, DECLARING A MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF A PAIN MANAGEMENT CLINIC AS DEFINED HEREIN; PROVIDING THAT THE MORATORIUM SHALL BE IN EFFECT FOR A PERIOD WHICH SHALL TERMINATE ON THE EFFECTIVE DATE OF TOWN'S OWN REGULATIONS FOR PAIN MANAGEMENT CLINICS; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in the Spring of 2009, the State Attorney's Office for the 17th Judicial Circuit in Broward County, Florida, issued an interim report on "The Proliferation of Pain Clinics in South Florida," in which it set forth the following facts: (i) from August 2008 to November 2009, one (1) new pain clinic is open in Broward and Palm Beach counties every three (3) days, (ii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the country, (iii) in 2008, prescription drugs were attributed to an average of 135 deaths per day in Florida, and (iv) pain clinics are migrating north from Broward County to major metropolitan areas; and

**WHEREAS,** the Town Council has recently been made aware 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,** news media such as 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, including a report in the Palm Beach Post published on December 13, 2009; and

**WHEREAS,** the threat of illegal narcotic activity and increased crime associated with such clinics is significant and should undermine the economic health of the Town; and

**WHEREAS,** the Town Administration is directed to analyze the potential effects of pain management clinics in the Town to analyze the criteria for regulations in connection with the issuance of any development permits, business licenses, or approvals for the location of pain management clinics within the Town, and to make recommendations which will better promote the health, safety, morals, and general welfare of the Town; and

**WHEREAS,** Palm Beach County, and several municipalities within Palm Beach County, have also issued a moratorium for pain management clinics and as a result, in the absence of similar action by the Town, the Town could become a prime location for pain management clinics in Palm Beach County; and

**WHEREAS,** while Town Administration is undergoing its analysis, and in order to prevent the occurrence during this period of uses which are incompatible with the intent of the Town's zoning and land development regulations, it is necessary to establish a moratorium and zoning in progress which prevents the granting of development permits or approvals for pain management clinics, as defined herein, in the Town, during this period; 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 Council finds and declares a need to temporarily suspend the issuance of permits or approvals for pain management clinics, as defined herein, until such time appropriate regulations can be adopted, to provide for the Town to review zoning and land development regulations in connection with pain management clinics.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, THAT:**

**Section 1.** 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.** **Legislative Findings of Fact.** The Town Council finds and declares that:

(1) All of the statements set forth in the recitals to this Ordinance are true and correct.

(2) For purposes set forth herein, it is in the best interest of the general public and there exists a need to declare a moratorium on the issuance of permits or approvals for pain management clinics in order for the Town Administration to examine and make recommendations to the Town Council as to potential criteria to be considered for the establishment of pain management clinics.

**Section 3.** **Intent and Purpose.** It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents of the Town of Loxahatchee Groves through the analysis of any impacts on the Town from pain management clinics, and through consideration of criteria for pain management clinic uses within the Town.

**Section 4.** **Definition.** "Pain management clinic" means 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. 458.005, 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 5.** **Boundaries**. This Ordinance shall be applicable to all properties located within the boundaries of the Town of Loxahatchee Groves.

**Section 6.** **Zoning in Progress and Moratorium Declared**. The Town Council hereby imposes a zoning in progress and moratorium upon the acceptance of applications and the issuance of permits or approvals for pain management clinics as to any property located in whole or in part within the Town.

**Section 7.** **Repeal of Ordinance**. This Ordinance shall stand repealed as of the effective date of the land use regulations governing pain management clinics adopted by the Town Council.

**Section 8.** **Repeal of Laws in Conflict.** All Ordinances or part of Ordinances in conflict herewith are in the same are hereby repealed to the extent of such conflict.

**Section 9.** **Severability.** If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

**Section 10.** **Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, ON FIRST READING, THIS __2nd_ DAY OF _____March_____, 2010.**

**TOWN OF LOXAHATCHEE GROVES**

**ORDINANCE NO. 2010-002**

**PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN LOXAHATCHEE GROVES, ON SECOND READING AND PUBLIC HEARING, THIS ___16th__ DAY OF ___March_____, 2010.**

**TOWN OF LOXAHATCHEE GROVES, FLORIDA**

ATTEST:

Ann Harper, Town Clerk

Mayor David Browning

Vice Mayor Dennis Lipp

Council Member Ron Jarriel

APPROVED AS TO LEGAL FORM:

Michael D. Cirullo, Town Attorney

Council Member Ryan Liang

Council Member Jim Rockett

MDC:aw
H:\2007\070240.LOX\ORD 2010\2010-002 (pain clinic).doc