



AGENDA REPORT

Meeting Date: December 21, 2010

Item Number: E-1

To: Honorable Mayor and City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO LIMIT NEW OR EXPANDED MEDICAL USES IN COMMERCIAL ZONES AND ADOPTING A MEDICAL USE OVERLAY ZONE.

Attachments:

1. Revised Ordinance
2. November 30, 2010 Agenda Report to City Council Without Attachments

RECOMMENDATION

It is recommended that the City Council adopt an ordinance amending the Municipal Code to limit new or expanded medical uses in commercial zones and adopting a medical use overlay zone that was revised from the November 30, 2010 City Council meeting pursuant to City Council direction.

INTRODUCTION

At its November 30, 2010 meeting, the City Council reviewed an ordinance to regulate medical use in the City and appointed an Ad Hoc Committee composed of Council Members Brucker and Brien to review revisions to the ordinance proposed by the City Council including the following:

1. Increase the proposed 2,500 square-foot maximum amount of medical floor area allowed under the exception;

2. Require signage in medical offices indicating free parking for medical patrons when free parking is required to be available;
3. Allow existing buildings with medical use to establish the amount of legal medical use in the building and allow medical use to relocate within a building provided medical use does not increase beyond the established legal maximum;
4. Discuss additional regulation related to the following issues:
 - a. Pharmacies at the ground floor;
 - b. Parking for medical office patrons displaying disabled placards;
 - c. Surgery centers;
 - d. In-lieu fee for medical buildings with insufficient parking; and,
 - e. Sunset clause for the ordinance.

The Ad Hoc Committee met with staff, discussed the revisions above as well as some additional issues, and recommended revisions that have been incorporated into the attached draft ordinance.

DISCUSSION

The revisions to the ordinance are discussed below.

1. Increase the proposed 2,500 square-foot maximum allowed under the exception

Conversion of a certain amount of general office space to medical office space may be permitted under the proposed ordinance for existing buildings that already have some medical use and can provide parking to Code for new medical use. The draft ordinance originally proposed a maximum of 2,500 square feet of space that could be converted to medical use under this exception. The City Council discussed increasing this maximum to 5,000 or 6,000 square feet to allow for more flexibility for existing buildings and the Ad Hoc Committee recommended a maximum of 6,000 square feet which is reflected in Section 7 of the proposed ordinance (page 4).

2. Require signage in medical offices indicating free parking

Buildings that took advantage of a parking restriping option that was available in the Code between July, 1993 and December, 2005, to add medical floor area, were required to provide "on site free, validated valet parking for all medical office patrons" and signage posted "indicating the availability of free validated valet parking for medical office patrons." This text was removed from the Code in 2005 when the restriping option was eliminated from the Code by the City Council. The proposed ordinance includes a provision reinstating these conditions so it is clear to building owners that these conditions still apply if parking areas were restriped. At the November 30, 2010 meeting, a majority of Council Members further requested that such signage indicating free, validated valet parking for medical office patrons should be posted in medical offices, as well as in the garage, so medical patrons are aware that they should be provided with free parking in the building. Section 15 of the draft ordinance has been revised to reflect this change (page 14).

3. Establish amount of legal medical use in each building

The City Council requested that the Ad Hoc Committee discuss establishing a ceiling for medical use within each building that would allow medical use to relocate within a building, provided medical use does not increase above the established ceiling. This would allow medical use to come and go in buildings where it currently legally exists, even if there is an intervening non-medical use.

The Ad Hoc Committee recommended that the amount of medical use in existing buildings be capped at the total square footage of legal medical use in buildings as of a date certain. Staff has proposed January 1, 2011 as the baseline date (section 7 of the proposed ordinance, page 3). Medical use may not exceed the ceiling established as of January 1, 2011 unless pursuant to the provisions of the ordinance, which provides two avenues for establishing new medical use: the exception for existing buildings and the overlay zone.

The Ad Hoc Committee discussed the challenge of establishing a ceiling for medical use in each building, based on verification of current legal medical use, because it can take staff many hours to verify the type of uses in a building, the square footage of the uses, the parking available for the uses and the legal status of all existing uses so as to establish current, legal medical use in the building. To address the high staff cost in gathering and verifying information regarding medical use, the Ad Hoc Committee recommended that building owners should provide all information to verify the status of medical use in a building and further recommended that incentives and penalties should be incorporated into the ordinance to encourage building owners to provide complete and accurate information.

Proposed new Zoning Code section 10-3-1620.1 D. (page 5 of the draft ordinance) requires building owners to submit to the City documentation of the amount of floor area occupied by legally permitted medical use on January 1, 2011. The documentation must be provided no later than June 30, 2011 or the provisions of the exception allowing new medical use will not be available to the building owner. "Additionally, if the submitted documentation includes any false statements or misrepresentations, then the building owner shall not be able to utilize the provisions of this Section 10-3-1620.1." the building owner would forfeit the opportunity to use the exception and would have to apply for an overlay zone. The documentation provided must be in a form and content satisfactory to the Director of Community Development and the ordinance includes language authorizing the City Council to establish fees for reviews and approvals required by this section so the City may recoup costs. It is noted that while interested building owners would submit documentation between January 1, 2011 and June 30, 2011, staff would not necessarily have completed verification of all submitted buildings by that date; verification will depend on staff availability and whether a particular building has an immediate need for review, such as a pending building permit application for a medical tenant improvement.

4a Pharmacies at the ground floor

To maintain and enhance the retail and pedestrian environment and promote more night life, the Ad Hoc Committee recommended that pharmacies on the ground floor in the City's pedestrian oriented zone should not have licensed pharmaceutical dispensaries (page 6 of the draft ordinance). The proposed ordinance was revised to exclude pharmacies from the definition of "retail use" in the pedestrian oriented area. Pharmacies, by definition in state law, compound and dispense drugs. A drug store could still be considered a retail use that could locate on the ground floor in the pedestrian oriented area so long as it does not include a licensed pharmacy.

4b Parking for medical office patrons displaying disabled placards

Pursuant to City Council direction, the Ad Hoc Committee expressed a desire to ensure that medical office patrons park in buildings where their medical offices are located and that those medical office patrons with disabled parking placards, in particular, park off-street so as not to take up street parking when parking is available in medical buildings. The proposed ordinance ensures that buildings that restriped to add medical use will provide free parking in the building to all medical patrons, which includes those with disabled placards. In addition, most buildings with medical use that received discretionary approval from the City in the last five years have conditions requiring free parking for all medical patrons. Finally, the proposed ordinance includes a provision that medical use developed under the overlay zone requires free parking for patrons and employees.

4c Surgery centers

Because of health and safety concerns, the Ad Hoc Committee recommended prohibiting new surgery centers under the exception (page 5 of the draft ordinance). The term "Specialty Clinic" is used in the draft ordinance rather surgery center as specialty clinic is a term previously defined in the Code to include surgery centers. A proposed new surgery center would need to occupy an existing surgery center or could be reviewed through an application for a medical overlay zone.

4d In-lieu fee for medical buildings with insufficient parking

The Ad Hoc Committee recommended that consideration of an in-lieu fee related to parking for medical use should be part of a review of the City's entire in-lieu program which is a future city Council work program item.

4e Sunset clause

Pursuant to City Council direction, the ordinance was revised to require a public meeting scheduled approximately eighteen months after the effective date of the ordinance to discuss its impacts (Section 18 of draft ordinance, page 15).

Ad Hoc Committee Recommendations

In addition to the revisions and discussion specifically directed by the City Council, the Ad Hoc Committee requested the following revisions to the ordinance:

Optometry Uses

Due to concern that an optometrist retail business could sublet permitted consultation space, the definition of "Retail Business," (page 2 of the draft ordinance), has been revised so the permitted optometrist use is clearly ancillary to the retail business, precluding a separate business from using the consultation space.

Overlay Zone Objectives

To maintain flexibility for the City Council to make decisions on specific medical use overlay zone applications, the Ad Hoc Committee recommended revising medical use overlay zone objective D (page 12 of the draft ordinance), to delete the last phrase as overbroad:

“Section 10-3-1857: OBJECTIVES:

The objectives of the C-PD-M Zone shall be as follows:

D. The proposed development and Medical Use will contribute to and enhance the character of the neighborhood and location, will contribute positively to the image of the City, shall not undermine efforts to maintain and foster an appropriate mix of uses in the City including a pedestrian-friendly environment in the vicinity of the development, ~~and will not foreclose a future pedestrian-oriented environment.~~”

Exception/Restriping Permits

The Ad Hoc committee recommended that those buildings that were issued parking restriping permits to add medical use prior to elimination of the restriping option from the Code should be able to use those parking spaces to apply for medical use under the exception (page 5 of draft ordinance). All other buildings applying for the exception would need to meet current Code for medical use parking.

FISCAL IMPACT

The staff time required to verify the total amount of medical floor area in each building as of January 1, 2011 is expected to be recouped through fees that will be brought forward to the City Council at a future meeting.

PUBLIC NOTICE

A public hearing notice was mailed on November 18, 2010 to all commercial property owners in the City. Notice was published in the Beverly Hills Courier and the Beverly Hills Weekly, two newspapers of local circulation. Additionally, staff has met with interested parties and made presentations to the Beverly Hills Chamber of Commerce Government Affairs Committee. The public hearing was closed at the November 30, 2010 meeting.

RECOMMENDED ACTION

It is recommended that the City Council introduce the ordinance amending the Municipal Code to limit new or expanded medical uses in commercial zones and adopting a medical use overlay zone, and set the ordinance for second reading and adoption at a future meeting.

Susan Healy Keene, AICP
Director of Community Development

Michelle McGrath for Susan Healy Keene

Approved By

Attachment 1
Revised Ordinance

ORDINANCE NO. 10-O- _____

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
LIMIT NEW OR EXPANDED MEDICAL USES IN
COMMERCIAL ZONES AND ADOPTING A MEDICAL USE
OVERLAY ZONE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1. This Ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, the proposed ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for protection of the environment because it will protect residential neighborhoods from impacts associated with uncontrolled intensification of commercial areas with medical land uses, and thus qualifies as a Class 8 exemption pursuant to Section 15308 of Title 14 of the California Code of Regulations.

Section 2. The City Council hereby amends Section 10-3-100 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding definition of terms in the zoning code to insert the following definition between the terms “medical office” and “mini-shopping center” as they presently appear in Section 10-3-100, with all other definitions in the Section remaining as previously adopted:

“MEDICAL USE(S): Medical Uses shall mean uses including medical office, medical laboratory, or any combination thereof.”

Section 3. The City Council hereby amends Section 10-3-100 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding definition of terms in the zoning code to insert the following definition between the terms “residential zone” and “retaining wall” as they presently appear in Section 10-3-100, with all other definitions in the Section remaining as previously adopted:

“RETAIL BUSINESS: A business that carries on as its principal business the selling of tangible commodities, goods, merchandise or wares. Retail business also includes beauty shops, nail salons, and spas. A retail business may include an optometrist use that is ancillary to the retail business. A retail business may only include ancillary space for the purpose of consultation with an optometrist if that space does not exceed the lesser of five percent of the total floor area of the business or two hundred square feet and that space is located at least thirty feet behind the storefront of the retail business facing a street.”

Section 4. The City Council hereby amends Section 10-3-1601 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses permitted in the C-3 Zone of Beverly Hills to change the permitted use listed as “Office” to read as follows, with all other permitted uses listed in Section 10-3-1601 remaining without amendment:

“Office (Excluding Medical Uses).”

Section 5. The City Council hereby amends Section 10-3-1602 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding building restrictions in the C-3 Zone of Beverly Hills to change the permitted uses or occupancies listed as “Offices” to read as follows, with all other permitted uses and occupancies listed in Section 10-3-1602 remaining without amendment:

“Offices (Excluding Medical Uses).”

Section 6. The City Council hereby amends Section 10-3-1603 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding businesses excluded in the C-3 Zone to insert the following additional prohibited use between “Machine laundries” and “Public and private stables” as follows, with all other prohibited uses listed in Section 10-3-1603 remaining without amendment:

“Medical Uses as defined in Section 10-3-100 of this Chapter except for Medical Uses that comply with Section 10-3-1620.1.”

Section 7. The City Council hereby adds Section 10-3-1620.1 to Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding an exception to the prohibition of medical uses to read as follows:

“10-3-1620.1 Medical Uses:

- A. Notwithstanding the provisions of Sections 10-3-1601 and 10-3-1602, buildings that received a certificate of occupancy from the City prior to January 1, 2011, may be used for Medical Uses provided that either: (i) the amount of floor area occupied by Medical Uses does not exceed the amount of floor area occupied by legally permitted Medical Uses on January 1, 2011 or (ii) the building is located in a Medical Overlay Zone and the Medical Uses are approved as part of a Planned Development. Notwithstanding Beverly Hills Municipal Code Section 10-3.4101, Medical Uses may relocate within the building provided that the total amount of floor area occupied by Medical Uses does not increase beyond the amount of floor area occupied by lawfully permitted Medical Uses on January 1, 2011.

B. Notwithstanding Subsection A and Beverly Hills Municipal Code Section 10-3-4101, building owners of buildings that received a certificate of occupancy from the City prior to January 1, 2011, may add up to six thousand (6,000) square feet of Medical Uses to the building by converting general office space to a Medical Use, even though the building is not located in a Medical Overlay Zone, if all of the following conditions are met;

1. The building is located on property in one of the following commercial zones: C-3, C-3T-1, C-3T-2, C-3T-3, C-R-PD, C-R, C-3A, C-3B, or E-O-PD.
2. If the property is located in the pedestrian-oriented area, as defined in Section 10-3-1653, the Community Development Director issues a minor accommodation pursuant to the provisions of Article 36 of this Chapter to authorize a Medical Use to occupy a space in a pedestrian oriented area provided that all other requirements of this section are met and the Director makes all of the findings pursuant to 10-3-1655.A.
3. The building contains one or more legal medical uses prior to application for either a building permit or minor accommodation pursuant to this section.
4. No new Medical Uses are located on the ground floor within the pedestrian-oriented area. For development located outside of the pedestrian-oriented area, no new Medical Uses are located within the first forty feet (40') measured from the front building façade, on any ground floor. Façades facing a side street, as defined in Section 10-3-100, shall not be considered a front building façade for purposes of this section.

5. Onsite parking for the new Medical Use is provided pursuant to the requirements of Section 10-3-2730 or pursuant to a restriping permit issued before December 16, 2005.
 6. No existing floor area may be removed, demolished or vacated to satisfy the parking requirements for a medical use.
 7. The Medical Use complies with the restrictions of the zone or underlying zone.
 8. The additional space shall not be occupied by a Specialty Clinic as defined in Section 10-3-1604.
 9. The building owner has submitted documentation in form and content satisfactory to the Director of Community Development that the proposed Medical Use meets the conditions of this Subsection B.
- C. Notwithstanding the provisions of Section 10-3-4101 of this Chapter, a legal nonconforming medical use located in a building that has been damaged by a disaster to the extent of more than fifty percent (50%) of its replacement value, may be re-established without application of the Medical Use Overlay Zone, provided the reconstructed building complies with applicable zoning standards, including parking requirements, in place at the time a building permit is issued for the replacement building. In no event shall the amount of floor area occupied by nonconforming medical uses in the replacement building exceed the floor area that would have been permitted in the damaged building.
- D. In order to implement the requirements of this Section 10-3-1620.1, no building owner shall utilize the provisions set forth in this Section 10-3-1620.1 to relocate or expand

Medical Uses unless the building owner has submitted documentation to the Director of Community Development, in form and content satisfactory to the Director, documenting the amount of floor area occupied by legally permitted Medical Uses on January 1, 2011. Such documentation shall be provided no later than June 30, 2011 or the provisions of this Section shall not be available to the building owner. This date may be extended by the Director. Additionally, if the submitted documentation includes any false statements or misrepresentations, then the building owner shall not be able to utilize the provisions of this Section 10-3-1620.1.

- E. The City Council may, by resolution, establish fees for reviews and approvals required by this Section.

Section 8. City Council hereby amends Section 10-3-1652 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding the definition of terms in the pedestrian-oriented area to amend the following definition to read as follows:

“**RETAIL USE:** A use which carries on as its principal business the selling of tangible commodities, goods, merchandise or wares, including the selling of food and beverages, directly to the ultimate consumers. For the purposes of this article, notwithstanding and without limiting the foregoing definition, "retail use" shall include restaurants, bars, nightclubs, theaters, beauty shops, nail salons, spas with a retail component, and retail businesses as defined in Section 10-3-100, but shall exclude car dealers and pharmacies, as defined in the California Business and Professions Code.”

Section 9. City Council hereby amends Section 10-3-1654 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses permitted in pedestrian oriented areas to read as follows:

“10-3-1654. USES PERMITTED AND PROHIBITED:

- A. No use other than a retail use or a hotel shall occupy a space with more than twenty five feet (25') of street frontage on the ground floor of any building or structure located in a pedestrian oriented area.
- B. Notwithstanding subsection A of this section, for any building or structure situated at the corner of two (2) streets located in a pedestrian oriented area and with frontage on both streets, a use other than a retail use or a hotel may occupy a space with up to twenty five feet (25') of ground floor street frontage on each street for a total ground floor street frontage of up to fifty feet (50').
- C. Medical Uses shall be prohibited in a pedestrian oriented area except as allowed pursuant to Section 10-3-1620.1.”

Section 10. The City Council hereby amends Section 10-3-1701 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding uses permitted in the C-3A Zone to change the permitted use listed as “Office” to read as follows, with all other permitted uses listed in Section 10-3-1701 remaining without amendment:

“Office (Excluding Medical Uses).”

Section 11. The City Council hereby adds Section 10-3-1703 to Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding prohibited uses in the C-3A Zone to read as follows:

“10-3-1703: Prohibited Uses: Medical Uses, except as permitted pursuant to Section 10-3-1620.1.”

Section 12. The City Council hereby adds Section 10-3-1803 to Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding prohibited uses in the C-3B Zone to read as follows:

“10-3-1803: Prohibited Uses: Medical Uses, except as permitted pursuant to Section 10-3-1620.1.”

Section 13. City Council hereby adds a new Section 18.5 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding regulation of medical uses in Beverly Hills to read as follows:

“Article 18.5. Medical Use Overlay Zone (C-PD-M)

10-3-1851: C-PD-M ZONE CREATED

There is hereby created and established in the City an overlay zone, designated as the Medical Use Overlay Zone (C-PD-M).

10-3-1852: PURPOSE AND INTENT:

The City Council finds and determines that it is necessary to restrict further intensification of medical uses in the City in order to limit commercial intrusion into residential areas, prevent

adverse traffic and parking impacts, maintain and promote the character and image of the City, foster economic vitality and encourage pedestrian activity in retail areas. The Medical Use Overlay Zone establishes a process to allow limited expansion of medical uses at appropriate locations in the City and in a manner that is consistent with the underlying zoning district and the elements of the General Plan. These regulations impose additional requirements to ensure that a medical use shall not be incompatible with uses permitted in adjacent areas and will not result in negative long-term impacts to the City.

10-3-1853: APPLICATION OF THE C-PD-M OVERLAY ZONE:

The C-PD-M overlay zone may be applied only to property located in one or more of the following commercial zones: C-3, C-3T-1, C-3T-2, C-3T-3, C-R-PD, C-R, C-3A and C-3B.

10-3-1854: APPLICABILITY OF UNDERLYING ZONE REGULATION:

Except as otherwise specifically provided in this article regarding medical uses, development in a C-PD-M zone shall comply with the zoning regulations applicable to the underlying zone.

10-3-1855: DEFINITIONS:

For the purposes of this article, the following word shall have the following meanings:

DEVELOPMENT: For the purposes of this article, “develop” shall include the conversion of any existing general office or other commercial space to a Medical Use, the enlargement of any existing building where the enlargement would be occupied in part or in

whole by a Medical Use, as well as the new construction or erection of a building proposed to be occupied in part or in whole by a Medical Use.

PLANNED DEVELOPMENT: A development that is approved pursuant to the procedures of article 18.4 of this chapter.

10-3-1856: USES PERMITTED:

Permitted uses of properties in a Medical Use Overlay Zone shall include Medical Uses, in addition to any other uses permitted or conditionally permitted in the underlying zone. When Medical Uses are developed as permitted by this Article, the regulations of this article shall govern whenever such regulations are different than other regulations set forth in this Chapter. No lot, premises, building or portion thereof in the C-PD-M Zone shall be used for any purpose except those approved by the Planning Commission as part of a Planned Development pursuant to Article 18.4 of this Chapter.

10-3-1857: OBJECTIVES:

The objectives of the C-PD-M Zone shall be as follows:

- A. Medical Uses in the particular location are consistent with the elements of the City's general plan and purpose and intent of this article;
- B. The proposed development and medical use:
 - 1. Will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to density, height, scale and massing of the streetscape, garden quality of the City, or any

combination thereof; unless the reviewing authority finds the development benefits outweigh the detrimental impacts.

2. Will promote harmonious development in the area; and,

3. Will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development.

C. The proposed development and Medical Use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, loading or manner of operation, unless the reviewing authority finds the development benefits outweigh the detrimental impacts.

The development shall provide onsite parking that is designed for ease of use and efficiency, with vehicle ingress and egress and patient drop off and pick up locations that would not adversely impact adjacent properties.

D. The proposed development and Medical Use will contribute to and enhance the character of the neighborhood and location, will contribute positively to the image of the City, shall not undermine efforts to maintain and foster an appropriate mix of uses in the City including a pedestrian-friendly environment in the vicinity of the development.

E. The proposed development and Medical Use contribute to and enhance the City's economic base and granting the request will leave ample space available for future commercial growth including business headquarters, entertainment businesses, information/technology businesses, retail businesses and other businesses as determined by the City.

- F. A public benefit shall be offered to the City and the public benefit shall, at a minimum, offset any long-term impacts to the City that result from allowing a Medical Use in the City's limited commercial areas.

10-3-1858: RESTRICTIONS:

The following restrictions shall apply to any development to which the Medical Use Overlay Zone is applied:

- A. All restrictions applicable to the zone or underlying zone;
- B. Medical Uses shall not be permitted on the ground floor of any building in the pedestrian-oriented zone unless the City Council finds, based on substantial evidence, that the proposed location is not pedestrian-oriented and is unlikely to become pedestrian-oriented in the future; and,
- C. Free parking shall be provided for patrons and employees of Medical Uses in the development and parking shall be provided that complies with all applicable parking requirements in this Chapter.

10-3-1859: PROCEDURES FOR APPROVAL:

- A. The procedure for applying the C-PD-M Zone to any property in the City shall be the same as described in Article 39 of this Chapter for a zoning amendment.
- B. The Planning Commission shall make a recommendation to the City Council to approve, deny or conditionally approve an application for a Planned Development. In making a recommendation to grant a Planned Development approval, the Planning Commission shall recommend such conditions on the approval that are reasonable and necessary to

protect the health, safety and general welfare and to offset any potential adverse impacts resulting from the medical uses.

- C. An application for a zoning amendment to apply the C-PD-M Zone to a property in the City shall be processed concurrently with an application for a Planned Development for a project with medical uses proposed on the same property.

Section 14. City Council hereby amends Section 10-3-4102 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding nonconforming parking in Beverly Hills to read as follows:

“10-3-4102: NONCONFORMING PARKING:

Any building that is nonconforming due to insufficient parking may be enlarged, or may be occupied by a use, other than a medical use, which requires additional parking, if sufficient parking is provided for such enlargement or use and the enlargement or use complies with all other provisions of this code. Additionally, notwithstanding the provisions of section 10-3-4100 of this article, a building that is nonconforming due to insufficient parking need not conform to the parking requirements of this chapter unless seventy five percent (75%) of the structure has been altered, renovated, repaired, or remodeled within a period of less than five (5) years. The percentage of alteration, renovation, repair or remodel, shall be determined by the ratio of the total surface area removed or demolished to the surface area in existence prior to the removal or demolition. The surface area elements to be included in the determination are: floors, roofs, exterior walls, including door and window openings, basement walls, and foundation walls. Each element shall be considered to have only one surface. An existing building that is

nonconforming due to insufficient parking may not be occupied by additional Medical Uses unless the building has parking for the additional Medical Uses that meets the parking requirements in Section 10-3-2730 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code and the Medical Uses are permitted pursuant to Section 10-3-1620.1 or a Medical Overlay Zone.”

Section 15. The City Council hereby amends Section 10-3-2730 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding the parking standard for “Medical offices” to read as follows, with all other parking standards listed in Section 10-3-2730 remaining without amendment:

“11. Medical offices as defined in Section 10-3-100 of this Chapter , including all areas devoted to administrative or reception purposes

1 space per 200 square feet of floor area; provided buildings constructed before December 6, 1989 that received building permits before December 16, 2005 to re-stripe parking areas to increase the number of parking spaces and permit additional medical floor area in the building, shall maintain on site free validated valet parking for all medical patrons and maintain posted signage in the parking garage and in or adjacent to all medical offices indicating the availability of free validated valet parking for medical office patrons as required by the Zoning Code at the time such projects were permitted. Any building area converted to medical use on or after December 16, 2005 which relies on a valid re-stripe permit shall also comply with the above requirements.”

Section 16. This ordinance shall not apply to: 1) applications for medical office projects that include discretionary review filed with the Community Development Department

on or before July 19, 2009, or 2) ministerial projects with a valid building permit issued prior to the effective date of this ordinance.

Section 17. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be remain in full force and effect.

Section 18. The City Council shall review this Ordinance and its impacts at a public meeting scheduled approximately eighteen months after the effective date of this Ordinance.

Section 19. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 20. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

Laurence S. Wiener (CW) for

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

Michelle McBrath for Susan Healy Keene

SUSAN HEALY KEENE, AICP
Director of Community Development

Attachment 2

City Council Agenda Report

November 30, 2010

without attachments



AGENDA REPORT

Meeting Date: November 30, 2010

Item Number:

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO LIMIT NEW OR EXPANDED MEDICAL USES IN COMMERCIAL ZONES AND ADOPTING A MEDICAL USE OVERLAY ZONE.

Attachments:

1. Ordinance
2. Planning Commission Resolution No. 1594
3. Information on Overnight Stay Ordinance
4. Planning Commission Staff Report, dated July 22, 2010
5. Planning Commission Staff Report, dated October 28, 2010

RECOMMENDATION

It is recommended that the City Council adopt an ordinance amending the Municipal Code to limit new or expanded medical uses in commercial zones and adopting a medical use overlay zone.

INTRODUCTION

In July, 2009, the City Council directed staff to develop an ordinance regulating medical uses in the City with consideration of an exception for existing buildings with Code-compliant parking for medical use. The City Council requested consideration of the following issues:

- Whether to prohibit ground floor medical office space;
- Evaluate the appropriate mix of medical office, general office and retail uses in the city;
- Understand the appropriate number of medical offices/doctors to meet the City's needs;
- Possible fiscal ramifications of medical use regulations;

- Limiting medical land uses on a geographic basis; and,
- Impact of medical uses on other land uses, including ability to foster more nightlife.

After two study sessions and four public hearings, the Planning Commission unanimously recommended a proposed ordinance that would allow continued operation of existing, legal medical uses but new medical use or conversion to medical use would no longer be permitted by-right in the various commercial zones. Property owners wishing to add or expand medical use would be required to seek application of a medical use overlay zone. Application of the medical use zone to a specific property would be reviewed by the Planning Commission and approved by the City Council with findings that the medical use would not have negative impacts and would provide a public benefit. An exception for existing buildings with legal medical use to convert up to 2,500 square feet of general commercial office use to medical use is included in the zone amendment. Both the medical use overlay zone and the exception require parking for the new medical use that meets current Code and include prohibitions and restrictions on ground floor medical use.

PLANNING COMMISSION REVIEW

The Planning Commission determined that limited new medical use could be allowed in the City pursuant to a review process that includes both application of a medical overlay zone to a site and approval of a discretionary permit for a specific medical use project on the site. This review process would be similar to the process used in the past to review several large mixed-use projects in the City. The Planning Commission was clear that a proposed overlay zone should not deviate from current standards for commercial development, including height and density limits, and would impose a higher standard of review for medical use projects, including a requirement for a public benefit as an objective of the overlay zone. The proposed benefit would be evaluated on a case by case basis by the Planning Commission and city Council to determine if the benefits are sufficient to offset the long-term impacts of dedicating more of the city's limited commercial space to medical use. The public benefit might, by way of example, take the form of one or more of the following: a public plaza or other public open space, onsite validated public parking, commitment to a particular type of medical practice providing a unique service or jobs with higher wages that could support surrounding restaurant and retail uses, an economic benefit.

In developing its recommendation, the Planning Commission considered many issues and various approaches that might be taken in regulating medical use. The Commission's work led to the following conclusions:

Impacts

The Planning Commission discussed how the regulation of medical uses involves consideration of short term and long-term impacts on the City. Individual medical use projects, for example, can have potentially adverse impacts on the immediate neighborhood (parking, traffic, aesthetic compatibility, hours of operation, etc.). Medical uses could also have long term impacts on the City as a result of the large number of medical businesses that occupy approximately twenty-one percent (21%) of the City's limited commercial office space. The Commission expressed concern about the fiscal impact of so much commercial area occupied by one use, how the mix of uses affects the City's image, retail-pedestrian environment and ability to attract priority businesses such as corporate headquarters, entertainment and high end retail businesses. Such businesses have been identified in economic reports as significant contributors to the City's image and fiscal bottom line.

Amount of Medical Use

Staff determined there is approximately 1,350,000 square feet of medical floor area in the City. Medical land use comprises approximately 21 percent, or more than one fifth of the total commercial office space in Beverly Hills. In discussing the amount of medical use in the City and its relative impact on the City, the Commission stressed the importance of ensuring that the City is well-served by medical offices and determined that the City currently has more than adequate medical offices to serve the community; however, allowing for the possibility of new medical services as health care evolves was one reason the Planning Commission did not recommend a prohibition on new medical use in the City.

Fiscal Impact

According to the 2008 Economic Sustainability Background Report prepared for the City, the health care sector is the City's second largest industry. This is due to the large number of medical businesses in the City. There is a significant difference between tax revenue generated for most businesses in the City and the business tax revenue generated for professional offices such as medical offices because most businesses are taxed on gross receipts while the medical and other professional offices are taxed on the number of employees. Medical office uses have typically commanded higher rents than general office uses and, therefore, contribute more to property and lease taxes collected by the City; however, general office uses typically have a higher number of employees relative to floor area than medical office uses so general professional office uses generate more revenue to the City in the form of slightly higher business taxes per building square foot. The 2008 Economic Sustainability Background Report shows that pay in the health care sector is well under the City average due largely to low-skilled workers who perform basic service jobs. Since pay has been found to correlate to the level of employee expenditure in the City, the study found that health care sector employees contribute fewer dollars to the local economy.

Appropriate Mix of Uses/Ground Floor

There are no specific guidelines that define a "healthy" mix of uses in a city or in commercial districts; it is determined by each City's vision, goals and unique local conditions. According to the Beverly Hills General Plan Update Technical Background Report (October, 2005), only 8.9 percent of Beverly Hills' land area (248.8 acres) is designated for commercial uses. Since the commercial area in Beverly Hills is so limited, the City historically has been vigilant in regulating commercial land uses. The City adopted a pedestrian-oriented area in 1981 when it determined that banks and other financial and real estate service businesses were occupying too much ground-floor retail area. Similarly, there is concern that medical use may be occupying too much valuable commercial office area, particularly at the ground floor where the City wishes to encourage pedestrian-oriented uses.

Type of Medical Use

Medical offices at which patients are regularly seen are regulated differently than medical laboratories that do not see patients and, therefore, have more flexible parking requirements. The Planning Commission determined that while there are some differences among medical uses such as outpatient clinics, surgical centers and therapist offices, it is difficult to make significant distinctions among them and, while traffic and parking impacts may differ, they all share other impacts as discussed above. Accordingly, the Planning Commission supported regulating all new medical uses.

Geographic Area

The City's commercial areas vary in terms of impact on residential neighborhoods and level of pedestrian activity. The Planning Commission determined that any new regulations should apply consistently to all commercial areas since medical use can impact all areas and it is the City's goal to encourage pedestrian-oriented activity in all parts of the City, including areas where such activity is currently limited. Moreover, the Planning Commission-recommended ordinance would allow for a case-by-case review, thus extending the protections afforded by the entitlement process to all areas of the City.

Code Prohibition

The Planning Commission deliberations led to the conclusion that prohibiting all new or expanded medical use outright would not afford the City flexibility to approve projects when found to be beneficial to the City and without negatively impacting adjacent areas. The Commission, did, however wish to strictly limit the amount of future medical use in the City and to allow the City to exercise maximum control over proposed medical office developments which is why the Commission ultimately recommended a medical overlay zone requiring City Council approval.

Overlay Zone

An overlay zone can be applied over an existing base zone (often referred to as the "underlying zone") to impose special regulations in addition to those in the underlying base zone. The proposed text of the medical use overlay zone includes a set of objectives that specifically address the impacts of medical use. After adoption of the overlay zone text, future applicants could request application of the overlay zone to their specific property through a zone change process. The benefit of setting up an overlay zone that is attached to sites on a case by case basis is that it provides a guideline to property owners as to medical projects that may be approved but allows the City to make the determination if a particular site is appropriate for medical use. The proposed medical use overlay zone would be reviewed by the Planning Commission with final action taken by the City Council.

Cap on Medical Use

A cap may be established independently of other regulation or may be established in conjunction with other regulatory tools. The Commission had an extensive discussion about a potential cap on medical use, and determined that an overlay zone and planned development review process would accomplish the City's goal of limiting medical use while establishing a process for applicants to seek authorization for new medical uses. Further, a cap would be difficult to administer and could have unknown consequences on the local leasing and real estate markets.

Conditional Use Permit (CUP)

A conditional use permit is a discretionary review for a project that can be approved by the Planning Commission. The Planning Commission discussed a CUP for new or expanded medical use with required findings to be made by the reviewing authority that would specifically address the impacts of medical uses. The Commission instead recommended a Planned Development Review process which is similar to a CUP but was developed to work in conjunction with an overlay zone and is the process that was used to review past projects proposed under mixed-use overlay zones.

Additional information is included in Attachment Numbers 3, 4 and 5 to this report. The details of the proposed ordinance are provided in the following section.

ORDINANCE PROVISIONS

The recommended zone text amendment, (Attachment 1), allows existing legal medical uses to continue with no additional regulation; however, all existing medical uses would become legal nonconforming uses. Pursuant to the City's existing Code regarding non-conforming uses, existing medical uses would be permitted to continue in their current locations so long as they were legally permitted at the time they occupied that space and there has been no intervening conforming use.

New medical uses or conversion of floor area to medical uses may be permitted pursuant to the following proposed new Code sections:

Exception (Proposed BHMC Section 10-3-16.21)

- A maximum of up to 2,500 square feet of total additional medical floor area may be permitted in an existing building in a commercial zone that has existing medical use and parking for the additional medical use that meets the Zoning Code (one 9' by 19' parking space for each 200 square feet of floor area).
- The exception may be used in designated commercial areas (those areas where medical use is currently permitted) but a Minor Accommodation permit is required for exemption applications in the pedestrian-oriented area.
- Under the exception, medical use is not permitted on the ground floor in the pedestrian-oriented area; outside of the pedestrian-oriented area, medical use is permitted on the ground floor so long as it is not within the first forty feet of the front of the building.
- Optometrists with a minimal amount of non-retail space were reclassified as a retail use in the Code and so would be allowed on the ground floor in all commercial areas.

Medical Use Overlay Zone (Proposed BHMC Section 10-3-1850)

- A property owner may apply to the City to have the City's new Medical Use Overlay Zone apply to particular property if that property is in a commercial zone that currently allows medical use.
- The Medical Use Overlay Zone allows medical use on the property with a Planned Development Permit (application made concurrently with the overlay zone application) that requires the proposed project to meet objectives that address the impacts of medical uses (See pages 10-11 of draft ordinance for complete objectives).

Objectives generally address:

intrusion of parking and other activity associated with medical uses into nearby residential areas;

negative impacts on retail/pedestrian vitality, the City's fiscal health, and efforts to attract a variety of commercial uses to the City including priority businesses such as headquarters and entertainment businesses important to the City's image and economic future; and,
the required provision of a public benefit.

- The proposed project in the Medical Use Overlay Zone must meet existing Zoning Code development standards.
- Medical use is not permitted on the ground floor in the overlay zone unless the City Council finds, based on substantial evidence, that the proposed location is not pedestrian-oriented and is unlikely to become pedestrian-oriented in the future.

Other Ordinance Provisions

Retail Business Definition

Pursuant to Planning Commission direction, "optometrist" was added to the definition of "retail business" because such businesses are widely considered to be retail businesses with a very limited medical component. The proposed definition of "retail business" includes a limitation on the size of permitted consultation space and a restriction that such space shall be located thirty feet (30') from the storefront so as to maximize retail area at the front of the store adjacent to the street.

Legal Nonconforming Use and Disaster Reconstruction

The draft ordinance includes language allowing legal nonconforming medical uses located in a building that has been damaged by a disaster to the extent of more than fifty percent (50%) of its replacement value, to be re-established without application of the medical use overlay zone, provided the reconstructed building complies with applicable zoning standards, including parking requirements, in place at the time a building permit is issued for the replacement building.

Code Clarification: Projects that Converted Space to Medical Use by Re-Striping

In 1989, the City increased the parking requirement for medical office use from one parking space for each 350 square feet (the requirement for office use), to one parking space for each 200 square feet for medical office use. Existing medical office buildings were "grandfathered in" at the 1:350 parking rate and became legally nonconforming buildings with regard to parking. In July 1993, the City Council adopted an ordinance allowing existing property owners to meet the 1:200 parking requirement for medical offices by restriping parking areas and using tandem and compact parking spaces to meet the 1:200 parking requirement so long as free, validated parking was provided for the medical office space allowed by the restriping. In December 2005, the City Council eliminated the restriping provision as an unnecessary incentive for medical office use. It has been the City's policy that all such restriping approvals are required to follow the conditions of approval as mandated by the Code at that time including "on site free, validated valet parking for all medical office patrons" and signage posted "indicating the availability of free validated valet parking for medical office patrons." A text amendment is intended to ensure it is clear to owners that the previous conditions still apply (see pages 13-14 of draft ordinance).

ZONE TEXT AMENDMENT FINDINGS/GENERAL PLAN CONSISTENCY

The Planning Commission found that the proposed zone text amendment is intended to address negative impacts from committing too much of the City's limited commercial land area to medical uses. Impacts include intrusion of parking and other activity associated with medical uses into nearby residential areas as well as negative impacts on retail/pedestrian vitality, the City's fiscal health, and efforts to attract a variety of commercial uses to the City including priority businesses such as headquarters and entertainment businesses important to the City's image and economic future. The City's recently revised General Plan includes the following Land Use policy, "LU 9.6 Medical Uses. Study, adopt and implement regulations that appropriately regulate medical land uses in the City." This policy is included under the following General Plan goal, "LU 9 Diverse Districts and Corridors. A diversity of vital and active business and commercial districts providing a choice of uses and activities for the City's residents and visitors." The proposed text amendment maintains the diversity of the City's commercial districts by further regulating new medical use which currently occupies a substantial percentage of the City's limited commercial area. The negative impacts identified above are specifically addressed by a number of other General Plan goals, policies and implementation strategies including "LU 1 Long-Term Stability," "LU 3 Managed Change," "LU 5 Complete, Livable and Quality Neighborhoods," "LU 10, Economically Vital Districts," "LU 11 Well-Designed and attractive Districts," "LU 12 Business Districts Adjoining Residential Neighborhoods" and, "LU 15 Economic Sustainability." The proposed ordinance protects neighborhoods and the City's character and fiscal health by limiting the proliferation of medical use and providing a review process to ensure that proposed new medical use will not negatively impact the City. As such the proposed text amendment will serve to further the public interest, health, safety, morals, peace, comfort, convenience, and general welfare.

ENVIRONMENTAL DETERMINATION

The subject draft ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations. Further, the proposed ordinance is exempt from CEQA on the separate and independent ground that it is an action of a regulatory agency (the City) for protection of the environment because it will protect residential neighborhoods from impacts associated with uncontrolled intensification of commercial areas with medical land uses, and thus qualifies as a Class 8 exemption pursuant to Section 15308 of Title 14 of the California Code of Regulations.

FISCAL IMPACT

The City will incur minimal fiscal impact from administration of the recommended zone text changes as fees will cover the additional discretionary review process. Individual projects that may be reviewed in the future pursuant to the ordinance would be assessed at that time with regard to fiscal impact.

PUBLIC NOTICE

A public hearing notice was mailed on November 18, 2010 to all commercial property owners in the City. Notice was published in the Beverly Hills Courier and the Beverly Hills Weekly, two newspapers of local circulation. Additionally, staff has met with interested parties and made presentations to the Beverly Hills Chamber of Commerce Government Affairs Committee.

RECOMMENDED ACTION

It is recommended that the City Council continue the ordinance amending the Municipal Code to limit new or expanded medical uses in commercial zones and adopting a medical use overlay zone, and set the ordinance for second reading and adoption at a future meeting.

Susan Healy Keene, AICP
Director of Community Development


Approved By _____