



AGENDA REPORT

Meeting Date: January 11, 2011
Item Number: G-6
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN 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

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

This ordinance amends the Municipal Code to limit new or expanded medical uses in commercial zones.

DISCUSSION

At the meeting of December 21, 2010 the City Council conducted a first reading of this ordinance.

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.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 11-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 February 11, 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 February 11, 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 February 11, 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 February 11, 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 the ground floor of any building with a depth of one hundred feet (100') or greater. For buildings with a depth of less than one hundred feet (100') and that are located on irregularly shaped lots, Medical Uses may be permitted in all or part of the first forty feet (40') upon a finding by the Director of Community Development that: (1) all other provisions of Section 10-3-1620.1B have been met and (2) the proposed expansion of Medical Use does not adversely impact surrounding development. Facades 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. 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 February 11, 2011. Such documentation shall be provided no later than August 11, 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.”

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.”

D. Those portions of licensed pharmacies devoted to dispensing prescription medicine shall be prohibited on the ground floor of buildings within the first thirty feet (30') behind the storefront facing a street.

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 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:

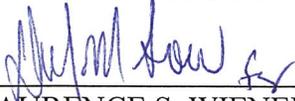
JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

[Signatures continue]

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager



SUSAN HEALY KEENE, AICP
Director of Community Development