



STAFF REPORT
CITY OF BEVERLY HILLS

**For the Planning Commission
Meeting of January 28, 2010**

TO: The Planning Commission

FROM: Michele McGrath, Senior Planner

SUBJECT: Consideration of Changes to Medical Land Use Policy that Limit or Prohibit New or Expanded Medical Uses in the City.

EXECUTIVE SUMMARY

After City Council meetings in July, 2009, the Planning Commission was directed to develop an ordinance further regulating medical uses in the City. On November 19, 2009, the Planning Commission conducted a study session to review additional regulation of medical uses (staff report attached) and requested that staff return with the following information provided in this report: identification of categories of medical uses and corresponding traffic/parking and tax information for each category as is available; number of medical offices/doctors in the City and map showing locations; amount of new medical land use approved in the City in recent years; existing commercial buildings with enough parking to convert or add medical use; adequacy of the City's current parking requirements for medical offices/buildings; and, information about instituting a transportation impact fee. In addition, the Commission requested draft CUP findings for medical uses including consideration as to how flexibility can be incorporated in the process, e.g. allowing small conversions or small amounts of additional medical floor area in existing buildings. Finally, the Commission requested additional information on instituting an annual or overall cap on medical uses.

Categories of Medical Uses

Medical uses can be defined in different ways by zoning codes, building codes and tax and licensing codes. The City of Beverly Hills defines "medical office" as follows:

"MEDICAL OFFICE: Any facility providing health service and/or medical, surgical, or dental care. 'Medical office' shall include, but not be limited to, a health center, health clinic, doctor's office, chiropractor's office, dentist's office, or any office offering therapeutic service or care. 'Medical office' shall not include a 'medical laboratory' as defined in this section."

A medical laboratory is separately defined as follows:

“MEDICAL LABORATORY: Any facility providing medical or dental services for the purpose of diagnosing or treating medical or dental conditions that does not receive patrons on site.”

Some specific types of medical offices are defined in other Code sections such as in the Overnight Stay Ordinance which includes definitions of “specialty clinic” (surgi-center) and “sleep disorder center.” The definition of medical offices includes all of the support functions for medical offices such as waiting rooms, conference rooms and administrative offices just as all of these functions are included as part of general offices. Because medical office uses require more parking spaces, applicants often try to separate out portions of the medical office use for parking purposes which is not consistent with staff’s interpretation of Code.

The categories of medical uses generally identified in municipal zoning codes include:

- medical offices/outpatient clinics;
- laboratories;
- hospitals/inpatient care; and, in some cases,
- long-term in-patient care (nursing homes).

Staff has found no further delineation of medical uses in any other municipal zoning codes surveyed. The main criterion for classification appears to be whether the medical use operates on an outpatient (medical office/clinic), inpatient (hospital, nursing home), or no patient (medical lab) basis. One of the relatively recent developments in medical uses is the increase in ambulatory surgery centers (“surgi-centers”). Surgi-centers are not generally defined separately in zoning codes and are regulated in the same category as medical offices/clinics because they operate on an outpatient basis.

The outpatient/inpatient distinction may stem from Building Code classifications. The 2007 California Building Code classifies all buildings and structures as to use and occupancy according to fire safety and relative hazard involved. The “Business Group B” occupancy includes the majority of commercial businesses such as banks, salons, outpatient clinics, laboratories, and professional services such as architects, attorneys, dentists, physicians, engineers, etc. Surgi-centers are included in this classification unless accommodating more than five patients receiving outpatient medical care that may render the patient incapable of unassisted self-preservation. In this case the surgi-center occupancy would be classified as “Institutional Group I” along with hospitals, nursing homes, detoxification facilities, residential care facilities, congregate living facilities, and other facilities offering inpatient services.

To consider further distinctions in categories of medical uses, it is helpful to have an understanding of the characteristics of a “typical” medical office use. Medical offices and clinics traditionally schedule a full day of appointments with patients in quick succession and have a large number of employees providing services. According to a number of medical

websites, the average patient time with a primary care physician in the United States is less than 20 minutes and the average patient wait-time for that appointment is a little over 20 minutes, resulting in a constant stream of patients, many who stack up in waiting rooms. For these reasons, the ITE* traffic and parking numbers are high for medical uses (see 11/19/10 staff report) and also why many cities, including Beverly Hills, consider medical offices a higher intensity use that requires more parking than for general office use.

It is difficult to characterize each medical use or to categorize groups of medical uses for the purpose of regulation; however, one group, therapists and counselors (psychoanalysts, psychiatrists, nutritionists) stand out as possibly generating fewer traffic and parking impacts due to longer appointment times and fewer patients/clients waiting for appointments. Therapists or counselors typically schedule appointments for a minimum of one hour, have fewer employees and usually no more than one client/patient waiting for an appointment. According to the American Psychological Association, approximately half of psychologists are self employed. Therapist and other counseling offices often resemble non-medical professional offices and staff has noted a number of therapists' offices in buildings that are otherwise occupied by lawyers, accountants and other professionals with no other medical uses. Should the Planning Commission wish to consider regulating therapists/counselors differently than other medical uses, one note of caution is that some therapists/counselors have group sessions or classes that could result in negative traffic and parking impacts.

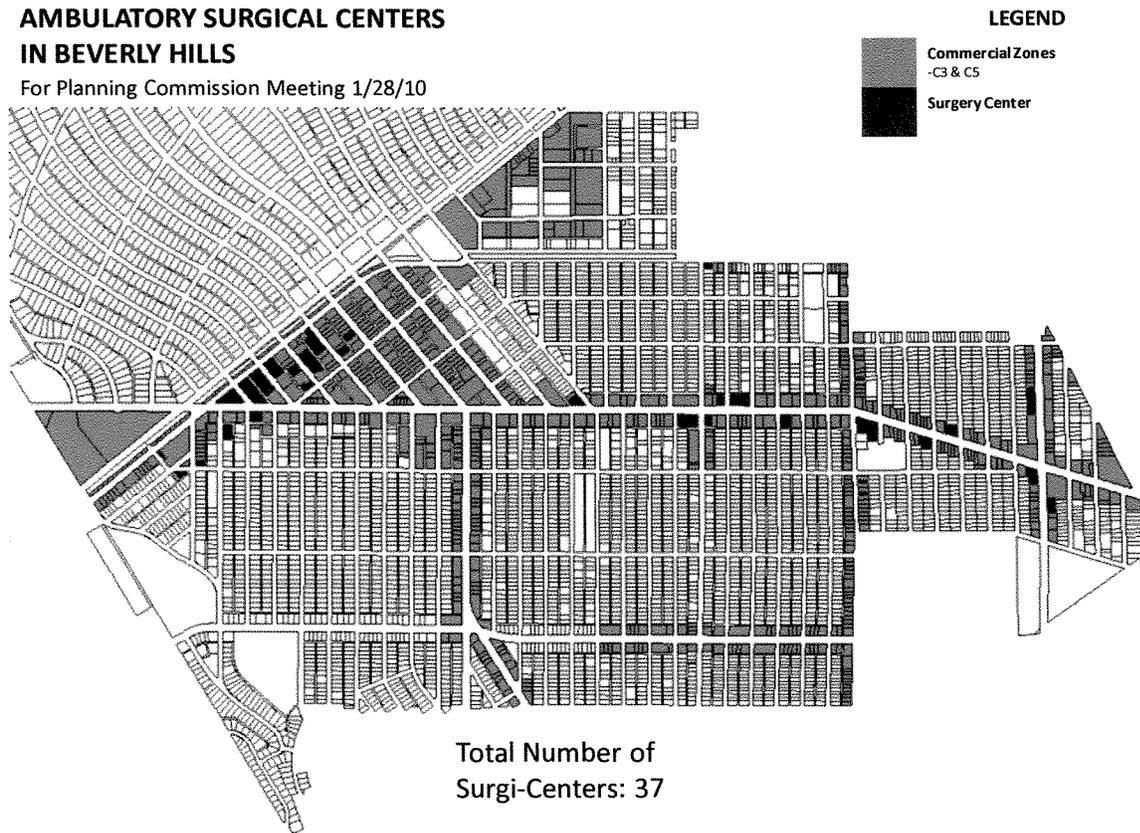
The Planning Commission raised the question as to whether surgi-centers should be regulated differently than other medical offices. It is noted that surgi-centers may operate differently from medical offices and the average daily number of trips and parking required for surgi-centers may be less than for medical clinics; however, the ITE guide for parking generation shows that traffic and parking rates at peak times are similar to medical clinics. The ITE information was based on a small sample and additional studies may be needed if the Planning Commission wishes to make a distinction between surgi-centers and other medical uses based on traffic and parking impacts.

While there may be a difference in the parking and traffic impacts between medical offices/clinics and certain other types of uses such as therapists/counselors included in the City's definition of medical uses, the City has identified other potential negative impacts of medical uses that may be an issue across the spectrum of medical uses. These other impacts include how medical uses affect the City's retail/pedestrian vitality, the impact on the City's efforts to attract a variety of commercial uses including businesses such as talent agencies that have been specifically identified by the City as important to the City's image and

* ITE refers to the Institute of Transportation Engineers, considered to be an authoritative source of data regarding vehicle trip generation and parking.

AMBULATORY SURGICAL CENTERS IN BEVERLY HILLS

For Planning Commission Meeting 1/28/10



Prepared by Community Development Department

economic future, and the impact of medical uses on the City's tax revenues. The Planning Commission may wish to consider these impacts when discussing whether the "medical office" definition in the Code needs further refinement. Please also see the 11/19/09 report for more information about the potential impacts of medical uses.

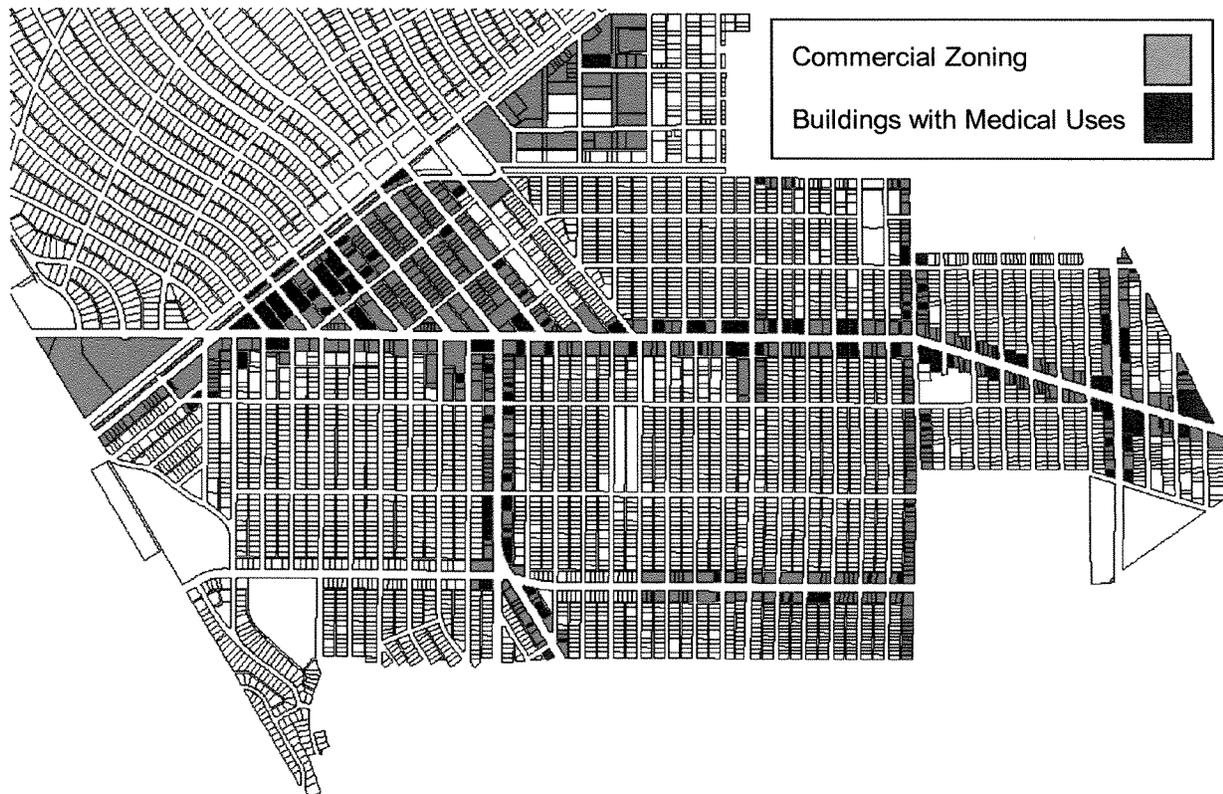
For tax purposes, the City categorizes uses in different classifications with different tax structures. Medical offices in Beverly Hills fall under the Class C, "Professions and Semiprofessions" category which taxes such businesses based on the annualized average number of professional and semiprofessional persons employed (See Attachment 2). Therapists usually fall under Class C but can fall under Class A, "Business and Personal Services" depending on the service provided. Under Class A registrants pay an annual basic tax plus a per employee tax for each employee. According to the City's Business Tax specialists, medical labs often fall under Class A because they are staffed by technicians rather than doctors or nurses. Surgi-centers can be Class B ("Retail, Wholesale, Manufacturing and Contractors"), Class C or Class F ("Commercial Property Renting and Leasing") depending on how the surgi-center bills activities. For example, if the surgi-center rents out space by the hour to a doctor, such activity could fall under Class F. The City's Business Tax specialists stated it is possible surgi-centers bring in more revenue to the City than other medical uses but staff has

not noticed a major difference due to the small number of surgi-centers as compared to the total number of medical offices in the City. The real difference in tax revenue to the City occurs between business tax classifications that pay taxes per employee (Classes A and C) and classifications that pay taxes based on a percentage of gross receipts (Class B).

Existing medical uses in Beverly Hills

Medical use comprises 21%, or more than one fifth of the office space in Beverly Hills. According to the 2008 Economic Sustainability Background Report prepared for the City, the health care sector is the City's second largest industry with 904 Outpatient Health Care employers in the City. There are a total of approximately 794 commercial buildings in the City with staff identifying medical offices in 136 or 17% of the buildings. This is consistent with the 21% figure in that many of the buildings with medical uses include multiple medical offices and there may be a few buildings with a small amount of medical use not yet identified by staff. These buildings are spread throughout the City's commercial areas with concentrations on the west end of the Business Triangle, sections of Wilshire Boulevard, South Beverly Drive below Gregory Way and Robertson Boulevard. Medical offices are noticeably less prevalent in the pedestrian-designated areas located in the central portion of the Business Triangle and South Beverly Drive between Wilshire Boulevard and Gregory Way.

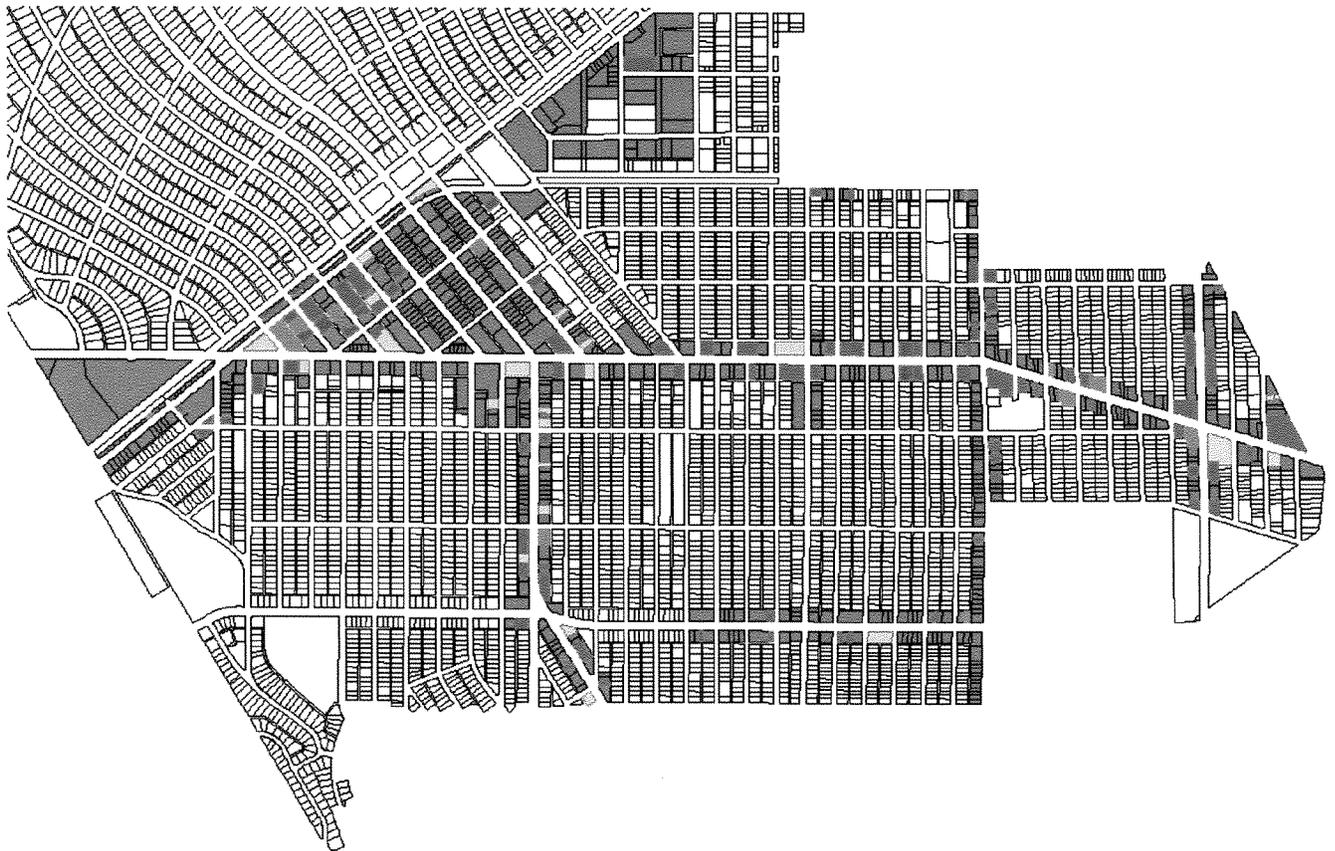
Buildings with Medical Uses



The maps above and below show existing medical uses in the City as could be determined by staff using City records, the County Tax Assessor’s website; the City’s business tax database, the internet and site visits. These maps do not necessarily represent permitted medical uses as it was time-prohibitive to review the permit status of each medical use in each of the 136 buildings shown, representing over 900 medical employers. The map below represents medical uses in existing buildings broken down into the following categories:

- Buildings that appear to be at least 85% medical use with medical at the ground floor
- Buildings that appear to be at least 85% medical use with ground floor retail uses including pharmacies. This category includes one-story buildings that have retail uses on the street and medical uses in the rear.
- Buildings that have a substantial number of medical offices/clinics.
- Buildings that have at least one or two medical offices (mostly therapists/counselors)

Medical Use Category Map



Note: List of medical buildings shown on this map is Attachment 3 to this report.

New medical land use approved in the City

Most conversions of general office use to medical use have been ministerial changes not requiring discretionary review due to the ordinance approved in 1993 allowing re-stripping of parking areas to meet the medical parking requirements of 1:200. This ordinance was repealed in 2005 with many property owners having taken advantage of the opportunity to convert additional floor area to medical use. An accurate record of all new medical use approved over the last five or ten years would require a review of all building permits during that time due to previous limitations of the City's record system; staff is instead relying on its knowledge that a large number of building owners converted general office use to medical office use in the past 15 years. Supporting this information is the 2008 Economic Sustainability Background Report prepared for the City by MuniServices and Burr Consulting that states "the strongest growth in the [City's] professional cluster from 2001 to 2006 was in outpatient health care: this industry's employment grew by 25 percent. Doctors' and dentists' offices drove this expansion (Pg. 18)."

Staff also reviewed all Planning Commission discretionary reviews of projects involving new medical use or conversions to medical use in the past six years. Those projects are listed below to give the Commission some additional background as to the types and locations of medical use projects reviewed by the City in recent years.

- 2004 - Ordinance amending regulations governing uses permitted in the Industrial Area (C-5 Zone), establishing procedures and criteria for permitting and regulating specialized medical facilities in the C-5 Zone.
- 2004 - 407 N. Maple Drive. CUP to allow a 159,000 SF comprehensive diagnostic and treatment medical use in conjunction with the above zone change. (The ordinance was not approved by the City Council and the site was occupied by an entertainment use, AOL)
- 2004 - 257 N. Canon Drive. DPR to allow a 45,000 SF, three-story medical office/retail commercial building. (Project approved by Planning Commission; however, applicant ultimately submitted a different project for a general commercial use with ground floor retail and no medical use that was also approved by the Commission.)
- 2005 - 9675 Brighton Way. CUP for medical office use in an existing medical office building with off-site parking for nine spaces within 500 feet of the use.
- 2006 - 8536 Wilshire Blvd. (Project originally approved 2001) Time extension and amendment for a DPR; modification to CUP for medical and retail uses and a variance for architectural features at three-story commercial building. (CUP modified in 2008 to convert to commercial condo).

In addition, the following projects were approved by the Commission with specific conditions prohibiting medical use in the projects because of a concern about traffic and parking impacts that had not been addressed in the environmental reviews for the projects:

- 2006 - 9601 Wilshire Blvd. CUP (Sports Club/LA). No sports medical center allowed as part of the operation of the Project.
- 2006 - 8767 Wilshire Blvd. commercial building (height variance to allow four stories). Medical uses prohibited.
- 2007 - 9378 Wilshire Blvd. (DPR for commercial building). No medical office permitted.

An exception was the project at 9090 Wilshire Blvd. that was granted a CUP for 44 off-site parking spaces to convert 20,101 SF of general office space to medical office space. This building was already two-thirds medical office use when the Planning Commission granted the approval and the environmental review specifically addressed impacts of medical office use.

Existing Commercial Buildings with Enough Parking to Convert or Add Medical Use

Based on staff's experience and research, there are few existing buildings that have enough Code-compliant parking to convert a substantial amount of floor area to medical use or to add medical use floor area. There are some buildings that may be able to convert a small amount of floor area to medical use. So long as these buildings meet Code, no discretionary review is required. One example is the commercial project at 257 North Canon Drive that was granted a Development Plan Review approval to allow a 45,000 SF, three-story medical office/retail commercial building. This project was originally approved by the Planning Commission with some medical office use but the applicant changed the project and it was ultimately approved with no medical uses. This project includes some parking in excess of the parking required for other commercial uses and could potentially still propose some medical office use so long as the project approval does not otherwise preclude it.

Adequacy of current parking requirements

While Beverly Hills is a unique City, the behavior of medical use patrons is not so different in urban areas and Beverly Hills' parking requirements for medical uses require as much or more parking than other Westside cities (see 11/19/09 staff report) and are consistent with available information such as the parking rates cited in the latest ITE Manual for medical clinics. The Planning Commission has also consistently required that medical parking shall be provided free to patrons and employees in buildings that have received discretionary approvals. In addition, buildings that have received ministerial approvals to restripe parking areas to add medical uses are required to provide free validated valet parking on site. As stated previously, the City recognized in the economic growth period in the 1980's that medical uses needed to provide additional parking and the parking requirements were changed from 1:350 to 1:200 for medical uses. In recognition of the severe economic downturn in the early 1990s, owners were allowed to restripe parking to achieve the 1:200 ratio to allow additional medical uses. That incentive was repealed in 2006.

According to the City's Director of Parking Operations, it is difficult to assess the adequacy of the City's parking requirements because of the differential parking rates in public and private garages and decades of parking policies that encourage patrons to seek out free public parking rather than park in private fee garages. The private garage on North Bedford Drive is free for the first hour and constantly at overflow whereas the public parking garage on North Camden Drive usually has many empty parking spaces. The Director of Parking Operations indicated an extensive study would be needed to determine the impacts and adequacy of the City's parking policies.

Transportation Impact Fee

A fee or exaction is usually a direct charge collected on a one-time basis as a condition of project approval (see 11/19/10 report). A City may charge an exaction/impact fee if a reasonable nexus between an impact and the fee charged can be shown. There is a nexus if the fee/exaction advances a legitimate City interest and mitigates adverse impacts that would otherwise result from a project. In addition, there must be a rough proportionality between the proposed fee/exaction and the project impacts the fee/exaction is intended to allay. In 2007/08, staff presented a draft study to the City Council regarding instituting development impact fees. The City Council received the study and did not direct staff to continue developing such a fee. An additional professional study would be needed to support a fee/exaction that would pay for improvements to address future traffic/parking impacts.

CUP findings for medical uses

The Planning Commission requested that staff present draft CUP findings for medical uses and consider how flexibility can be incorporated in the process, e.g. allowing small conversions or small amounts of additional medical floor area in existing buildings. The City Council specifically directed the Planning Commission to consider a provision that would allow medical office conversions in existing buildings if the proposal meets current Zoning and Building Codes including Code-compliant parking.

At the November meeting it appeared the Planning Commission is interested in considering medical use regulations that would apply Citywide. It is noted that medical uses are currently prohibited in the C-5 (Industrial) Zone and already require a CUP in the C-3T-3 Zone. In addition, medical uses are subject to the following Zoning Code sections:

Article 16.5: Restricted Uses in Pedestrian-Oriented Areas

Medical uses are not allowed on the ground floor of buildings in the pedestrian-oriented area (retail area of the Business Triangle) unless less than 25 feet wide and authorized by the Director of Community Development or approved by the Planning Commission through a CUP.

Article 19.5: Transition Between Commercial and Residential Uses

Medical uses located near residential uses are currently subject to this ordinance that imposes additional operational standards for medical and certain other uses.

Staff has provided two maps, one showing the current pedestrian-oriented area and one showing the Commercial-Residential Transition Areas should the Planning Commission wish to discuss limiting additional regulations to certain areas of the City or to consider different regulations for different areas.

Based on input received thus far, staff proposes that the Planning Commission consider a hierarchy of review for medical uses. Below are potential levels of review using existing review processes in the Zoning Code.

Levels of Review

- Exempt (from additional review beyond current Codes)
- Minor Accommodation
 Staff level review with a public notice: can be referred to the Planning Commission for review
- Conditional Use Permit
 Planning Commission public hearing.

The following are potential criteria to consider to determine the appropriate level of review:

- Existing or new building
- Amount of medical office use currently in the building
- Amount of area proposed to be converted to medical use or added as medical use.
- Size of building
- Geographic location: located in the pedestrian-oriented or transition area.

Following is a suggested medical office review hierarchy as a starting point for discussion:

Exempt

Small conversions to or additions of medical use (staff proposes up to 400 square feet) in existing buildings that meet current Zoning and Building Codes including the parking requirements for medical use. This is no different than current Code.

Minor Accommodation

Small conversions to or additions of medical use (up to 400 square feet) in existing buildings that are currently occupied by at least 85% medical uses and that meet current Zoning and Building Codes but cannot meet the current parking requirements for the new medical use. A parking study could be required. Staff proposes that any CUP findings that may be developed for medical use should also apply to a Minor Accommodation for medical use.

Conditional Use Permit (CUP)

All other conversions to or additions of medical use including all new buildings proposing to include any medical use. The City's loading ordinance provides the Planning Commission with discretion regarding loading requirements when a project is approved pursuant to a CUP. The City's parking standards for medical uses would still apply. The Planning Commission may wish to discuss adding medical uses to the list of uses for which the Planning Commission may consider reduced parking and loading requirements if satisfactory evidence is presented to the Commission. It is noted this would result in applicants proposing medical uses without Code-required parking.

A list of potential findings for a medical use Minor Accommodation or CUP is below. Projects such as new floor area exceeding 2,500 square feet are subject to Development Plan Review which has its own set of findings (see below). A new building proposed as medical office would be subject to the findings for Development Plan Review as well as any new findings required for a new CUP for medical use. The general CUP finding that applies to all projects requiring a CUP is: "the Planning Commission finds that the proposed location of any such use will not be detrimental to adjacent property or to the public welfare."

Development Plan Review Findings:

- A. The proposed plan is consistent with the general plan and any specific plans adopted for the area.
- B. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.
- C. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

- D. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.
- E. The proposed plan will not be detrimental to the public health, safety or general welfare.

In addition, when evaluating an application involving open air dining, the reviewing authority shall approve the application only if:

1. The proposed plan will not create any significantly adverse parking impacts as a result of employee or patron parking demand.
2. The proposed plan will not create any significantly adverse impacts on neighboring properties as a result of:
 - a. The accumulation of garbage, trash or other waste;
 - b. Noise created by the operation of the restaurant or by employees or visitors entering or exiting the restaurant;
 - c. Light and glare;
 - d. Odors or noxious fumes.

In approving a development plan application, the reviewing authority may impose such conditions as it deems appropriate to protect the public health, safety and general welfare.

Potential CUP Findings for Medical Use

- A. The proposed medical use is compatible with and will not result in any adverse impacts to surrounding uses with regard to traffic safety, parking, scale and massing of the streetscape, or garden quality of the city.
- B. The granting of the CUP will not lead to an overconcentration of medical uses in a location where such overconcentration will result in adverse impacts to surrounding uses with regard to traffic safety, parking, scale and massing of the streetscape and the pedestrian environment in the vicinity of the project.
- C. The proposed medical use will not by location or design negatively impact the pedestrian environment in the vicinity of the project.
- D. The proposed location for the new building in which medical offices are located or the configuration of the existing building in which the proposed medical office space is located is not suited to headquarters businesses and granting the request will leave ample space available for future retail and other commercial growth;

- E. The building housing the medical use provides adequate onsite parking that complies with all applicable parking requirements of this code and such parking is provided at a rate of at least one space per two hundred (200) square feet of area for the medical use.
- F. The building housing the medical use provides adequate patient drop off/pick up locations that comply with the Code and granting the request for a medical use permit will not result in adverse impacts to traffic circulation on adjacent streets.
- G. Any new medical use requested at the ground floor of any building facing a non-residential street must have a retail presence along that non-residential street.

Cap on the total number or square footage of medical uses permitted in the City

Staff has identified the number and location of existing buildings in the City that contain medical offices and the Planning Commission could put a cap on the number of buildings that may have medical uses or could limit the number of applications for medical uses that the City may accept in any given year. As indicated previously, staff has concerns about instituting a threshold number as it is difficult to determine an exact baseline figure for medical offices, as well as how much new medical office space should be allowed in the City. Creating a separate registration program would require a substantial amount of resources and delay other policy projects. Previous caps the City has adopted, one on the annual number of new hotel rooms and the other an annual limitation on residential conversions to common interest developments, have not proved necessary.

Pipeline Projects

Projects involving medical office use are currently being processed. Previously the City Council discussed exempting from new regulations projects at a certain point in the process. Should the Planning Commission consider restricting, limiting or prohibiting new medical uses, the Commission may wish to consider whether projects in the pipeline should be exempt.

ENVIRONMENTAL ANALYSIS

A draft ordinance would be reviewed for compliance with the California Environmental Quality Act (CEQA) for consideration by the Planning Commission.

PUBLIC NOTICE AND COMMENTS

This item was on the July 7 City Council Study Session agenda and the July 21, 2009 formal City Council agenda as an interim urgency ordinance that was not adopted. Interested

persons and organizations including the Beverly Hills Chamber of Commerce were notified for the study session item before the Planning Commission on November 19, 2009 and for this study session.

RECOMMENDATION

It is recommended the Planning Commission direct staff to prepare an ordinance amending the Beverly Hills Municipal Code to further regulate new medical office uses in the City.



MICHELE MCGRATH

Attachments:

1. Planning Commission Staff Report, November 19, 2009
2. Beverly Hills Business Classifications and Taxes
3. List of Beverly Hills Buildings that Contain Medical Uses
4. Pertinent Zoning Code Sections
5. Pedestrian-Oriented Area Map
6. Commercial Residential Transition Areas Map