



Planning Commission Report

Meeting Date: October 28, 2010

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.

Recommendation: Conduct Continued Public Hearing and Adopt a Resolution Forwarding a Recommendation that the City Council Adopt the Subject Ordinance.

REPORT SUMMARY

The Planning Commission reviewed a draft resolution and ordinance at a public hearing on October 14, 2010, and proposed revisions which are presented in this report. A redlined version of the draft ordinance showing the changes is attached along with a clean copy of the revised ordinance, the proposed resolution recommending the ordinance to the City Council and a copy of the staff report from the October 14, 2010 meeting.

BACKGROUND

- 7/21/09: City Council directed the Planning Commission to develop an ordinance regulating medical uses in the City with consideration of an exemption for existing buildings with Code-compliant parking for medical use
- 11/19/09
- 1/28/10: Planning Commission Study Sessions
- Feb. – May/10: Staff conducts study of medical use floor area in Beverly Hills
- 6/10/10
- 7/22/10: Planning Commission Public Hearings
- Sept. 2010: Planning Commission Subcommittee Meeting
- 10/14/10: Planning Commission Public Hearing to review draft resolution and ordinance

Attachment(s):

1. Resolution
Draft Ordinance (Redlined)
2. Planning Commission Staff Report, 10/14/10

Report Author and Contact Information:

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DISCUSSION

The Planning Commission requested the following revisions included in the attached ordinance:

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.

Medical Uses on the Ground Floor:

The Planning Commission requested revised ordinance language that would allow more flexibility for owners to lease ground floor space outside of the pedestrian oriented area to medical uses so long as the medical uses would not impact the potential for pedestrian experiences.

2,500 Square-Foot Exemption

In Section 10-3-1620.1 of the proposed ordinance, the 2,500 square-foot exemption for existing buildings (page 5 of Redlined Ordinance), paragraph B 4 was revised so new medical use would not be permitted on the ground floor of the pedestrian-oriented area but could be permitted in areas outside of the pedestrian-oriented area so long as no new medical uses will be within the first forty feet (40’) of a building as measured from each building façade, on any ground floor, facing the street.

Medical Overlay Zone

In Section 10-3-1858 of the proposed ordinance regarding restrictions in the medical overlay zone, 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. The Planning Commission’s consideration of a planned development permit for any project in a medical uses overlay zone, whether inside or outside of a pedestrian-oriented area, would require a finding that the following objective of the zone will be met by the project:

“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 and 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.”

Nonconforming Parking:

Language proposed to be added to Section 10-3-4102 of the Zoning Code regarding nonconforming parking was intended to clarify that the addition or expansion of medical uses in an existing building with non-conforming parking could not take advantage of Section 10-3-4102 but instead would now be subject to the new medical use ordinance. The language in Section 10-3-4102 has been revised to clarify that any new medical use in the City must meet all current parking codes as well as the requirements in either Section 10-3-1620.1 (2,500 square-foot exemption for medical use) or 10-3-1850 (medical overlay zone) of the Zoning Code.

Overlay Objectives

In reviewing the final draft ordinance and direction from the Planning Commission, staff determined the language in Medical Use Overlay Zone objectives B. and C. (page 11 of the attached draft ordinance) stating the proposed medical use “will not result in any adverse impacts” would not allow the Planning Commission the flexibility it discussed to approve a potentially worthy project. A project may be proposed that has some detrimental impacts, particularly considering the City’s new CEQA thresholds, but may also provide a significant benefit to the City such as additional parking levels for public parking. To allow the Planning Commission and City Council the opportunity to consider such projects, staff has revised the language in these two objectives to read, “...will not result in detrimental impacts...” rather than “...will not result in any adverse impacts...”. As a result, if the project benefits are greater than project detriments, the reviewing authority can approve the project.

ENVIRONMENTAL ASSESSMENT

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 Guidelines¹, 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

PUBLIC OUTREACH AND NOTIFICATION

This public hearing was previously noticed for the October 14, 2010 meeting and the public hearing was continued to the certain date of October 28, 2010.

Public Comment

As of the time of this report, staff has received a telephone call expressing concern about restrictions on medical uses as well as telephone calls requesting additional information about the proposed regulations but offering no comment. Additionally, among a number of comments received from the

¹ The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

Beverly Hills Chamber of Commerce Governmental Affairs Committee was the concern that medical use, which is currently a legal use in most commercial areas in the City, would become a legally nonconforming use. The result could be that individual buildings affected by a fire or other disaster may not be able to be re-occupied by medical use without applying for the medical overlay zone. Staff is reviewing the issue and will be prepared to address it at the meeting.

NEXT STEPS

It is recommended that the Planning Commission adopt a resolution forwarding a recommendation that the City Council adopt the subject ordinance.

Alternatively, the Planning Commission may consider the following actions:

1. Modify the draft ordinance or Resolution as appropriate
2. Direct staff to conduct additional analysis and continue the public hearing.

Report Reviewed By:



Jonathan Lait, AICP
City Planner

Attachment 1

Planning Commission Resolution

RESOLUTION NO.

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL AMEND THE BEVERLY HILLS MUNICIPAL CODE TO LIMIT NEW OR EXPANDED MEDICAL USES IN COMMERCIAL ZONES AND ADOPTING A MEDICAL USE OVERLAY ZONE

WHEREAS, the Planning Commission has considered the proposed amendment to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the “Amendment”); and

WHEREAS, the Planning Commission considered the zone text amendment set forth in the proposed Amendment at study sessions on November 19, 2009 and January 28, 2010 and at duly noticed public hearings on June 10, 2010, July 22, 2010 and October 14, 2010, at which times it received oral and documentary evidence relative to the proposed Amendment; and

WHEREAS, the Planning Commission finds that the proposed Amendment is required for the public health, safety, and general welfare, and that such Amendment is consistent with the general objectives, principles, and standards of the General Plan;

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The Amendment has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (CEQA) pursuant to Section

15061(b)(3) of Title 14 of the California Code of Regulations and the City’s environmental guidelines, (hereafter the “Guidelines”), and it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. 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. 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 intensification of commercial 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 Planning Commission does hereby find 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.”¹ 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 ordinance maintains the diversity of the City’s

¹ Beverly Hills General Plan, April 30, 2010, Page 31

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.

Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendment substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted:

Lili Bosse
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:

Secretary

Approved as to form:

David M. Snow
Assistant City Attorney

Approved as to content:

Jonathan Lait, AICP
Assistant Director of Community Development /
City Planner

Attachment 1A

Proposed Ordinance (Redlined)

EXHIBIT A

[DRAFT]

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 USES
OVERLAY ZONE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY

ORDAINS AS FOLLOWS:

Section 1. The City Council considered this Ordinance at a duly noticed public hearing on [date]_____, and at the conclusion of the hearing introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 2. 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.

Section 3. 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 4. 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 and includes beauty shops, nail salons, and spas and optometrists with a retail component. A retail business may include space for the purpose of consultation with a ~~licensed~~ medical use professional so long as that space does not exceed the lesser of five percent of the total floor area of the business or 200 square feet and that space is located at least thirty feet (30 feet) from the storefront of the retail business facing a street.”

Section 5. 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 6. 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 7. 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 “Mmachine laundries” and “Ppublic and private stables” as follows, with all other prohibited uses listed in Section 10-3-1603 remaining without amendment:

“Medical uses as that term is defined in Section 10-3-100 of this chapter except for medical uses that comply with Section 10-3-1620.1.”

Section 8. City Council hereby adds Section 10-3-1620.1 of 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. Buildings that received a certificate of occupancy from the City prior to EFFECTIVE DATE, may continue to use the floor area legally permitted to be occupied by medical uses without obtaining a medical overlay zone designation for the site on which the building is located. If floor area committed to medical uses is changed to a different commercial use or uses, such change is subject to the nonconforming use requirements of Section 10-3-4100 of this chapter.¹
- B. Buildings that received a certificate of occupancy from the City prior to EFFECTIVE DATE, may add one or more medical uses in existing space in the building up to a maximum amount not to exceed a cumulative total of 2,500 square feet in total floor area without first obtaining a medical overlay zone designation pursuant to Article 18.5 of this Chapter for the site on which the building is located but only if all of the following 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 may issue a minor accommodation pursuant to the provisions of Article 36 of this chapter to authorize a medical use to

¹ Section 10-3-4100 is “Nonconforming Buildings and Uses.” Once a nonconforming use is changed to a conforming use, the nonconforming use may not be resumed; additional medical uses would require compliance with the exception or application for the medical overlay zone. [Please note that the footnotes are for informational purposes, and would not be included in the actual code amendment.]

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.²

3. The building must contain 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 permitted on the ground floor within the pedestrian-oriented zonearea. For development located outside of the pedestrian-oriented zonearea, no new medical uses are permitted within the first forty feet (40') measured from each building façade, on any ground floor, facing a street.
5. Onsite parking for the new medical use is provided pursuant to Zoning Code requirements as found in Section 10-3-2730.
6. No existing building floor area may be removed, demolished or vacated to space occupied by general commercial use or vacant and most recently occupied by general commercial use may be demolished to provide parking spaces to satisfy the parking requirements for a medical use.
- 6.7. All restrictions applicable to the zone or underlying zone shall apply.
- 7.8. Medical use zoning clearance must be obtained in addition to any other required applications.

² This references the findings that must be made to approve a minor accommodation for a non-retail use on the ground floor in the pedestrian-oriented area.

Section 9. City Council hereby amends Section 10-3-1652 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code regarding definition of terms in the pedestrian-oriented area to amend the following definition to read as follows:

“RETAIL USE: A facility 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, ~~and~~ spas with a retail component, and retail businesses as defined in Section 10-3-100, but shall exclude car dealers.”

Section 10. 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'). (Ord. 81-O-1784, eff. 3-18-1981; amd. Ord. 02-O-2391, eff. 3-8-2002)

C. Medical uses as that term is defined in Section 10-3-100 of this chapter shall be prohibited unless allowed pursuant to Section 10-3-1620.1.”

Section 11. 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 12. City Council hereby adds Section 10-3-1703 of 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 as ~~that term is defined~~ in Section 10-3-100 of this chapter unless allowed pursuant to Section 10-3-1620.1.”

Section 13. City Council hereby adds Section 10-3-1803 of 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 as ~~that term is defined~~ in Section 10-3-100 of this chapter unless allowed pursuant to Section 10-3-1620.1.”

Section 14. 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 Uses 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 Uses 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 that meets all of the following criteria:

- A. The property is 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
- B. The property is not located in the pedestrian-oriented area as defined in Section 10-3-1653.

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 meaning:

DEVELOPMENT: For the purposes of this article, shall include the conversion of any existing general office or other commercial space to medical uses, the enlargement of any existing building where the enlargement would be occupied in part or in whole by medical uses, as well as the new construction or erection of a building proposed to be occupied in part or in whole by medical uses.

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 to which the Medical Use Overlay Zone is applied shall include medical uses, as defined in Section 10-3-100, in addition to any other uses permitted or conditionally permitted by 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 ~~any adverse impacts~~ 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 project 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 ~~any adverse impacts~~ 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 project development benefits outweigh the detrimental impacts. ~~and~~ 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 and 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 project 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 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 Office-Uses Overlay Zone is applied:

- A. All restrictions applicable to the zone or underlying zone
- ~~B. All provisions of article 19.5³ of this chapter;~~
- ~~C.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,~~

³-Refers to ~~Commercial-Residential-Transition-Zone~~ regulations

that the proposed location is not pedestrian-oriented and is unlikely to become pedestrian-oriented in the future; and,

D.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 zoning amendment.⁴
- 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 15. 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:

⁴ Article 39 is the zoning amendment section of the code. Planning Commission and City Council public hearings are required.

“10-3-4102: NONCONFORMING PARKING:

Any building that is nonconforming due to insufficient parking may be enlarged, or may be occupied by a use, ~~(but not 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 ~~for a legally nonconforming medical uses may not be occupied by additional medical uses unless the building has parking for the additional medical uses that meets the parking requirements in~~ if it complies with the provisions of Section 10-3-1620.1 or Section 10-3-1850-2730 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code and complies with the requirements of either Section 10-3-1620.1 or 10-3-1850 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code.”

Section 16. 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 under section 10-3-100 of this chapter

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 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 17. This ordinance shall not apply to applications for medical office projects that include discretionary review filed with the Community Development Department on or before July 19, 2009 or to ministerial projects with a valid building permit.

Section 18. 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 19. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 20. 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 21. 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
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

SUSAN HEALY KEENE, AICP
Director of Community Development

Attachment 2

Planning Commission Staff Report

October 14, 2010



Planning Commission Report

Meeting Date: October 14, 2010

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.

Recommendation: Conduct Continued Public Hearing and Adopt a Resolution Forwarding a Recommendation that the City Council Adopt the Subject Ordinance.

REPORT SUMMARY

After recent Planning Commission public hearings regarding regulation of medical uses at the June 10, 2010 and July 22, 2010 Planning Commission meetings, the Commission appointed a subcommittee of Chair Bosse and Vice Chair Yukelson to discuss a draft ordinance and report back to the Commission. The Subcommittee met on September 21, 2010 and attached is a draft ordinance for the Commission's review.

BACKGROUND

- 7/21/09: City Council directed the Planning Commission to develop an ordinance regulating medical uses in the City with consideration of an exemption for existing buildings with Code-compliant parking for medical use
- 11/19/09
- 1/28/10: Planning Commission Study Sessions
Reviewed history of medical office regulation in Beverly Hills, summary of the City Council's discussions, impacts of medical office use in the City, information about the number and location of buildings in the City housing medical uses
- Feb. – May/10: Staff conducts study of medical use floor area in Beverly Hills
- 6/10/10: Planning Commission Public Hearing
Information on amount of medical floor area in City and potential regulatory tools including prohibition, a cap, overlay zone, conditional use permit.
- 7/22/10: Planning Commission Public Hearing
Refinement of potential regulatory process focusing on a cap, floating medical overlay zone, conditional use permit
- September 2010: Planning Commission Subcommittee Meeting

Attachment(s):

1. Resolution
Draft Ordinance
2. General Plan Consistency
3. Table of Commercial Zones and Map
4. Pertinent Zoning Code Sections

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DISCUSSION

Staff developed a draft ordinance for the Subcommittee to review based on the following goals articulated by the Planning Commission at its July 22, 2010 meeting:

- Severely limit the amount of new medical use in the City, including conversion of space in existing buildings. Existing legal medical use may remain as legal nonconforming use.
- Regulate new medical use with a two-step discretionary review process:
 - Floating medical overlay zone ► Determines if site is appropriate for medical uses
 - Conditional Use Permit (CUP) ► Make specific findings to approve a project with medical uses
- Exception for existing buildings with code-required parking
 - Specific restrictions to be discussed by the Subcommittee.

Two Step Process: Medical Overlay Zone and Planned Development

The ordinance proposes a two-step discretionary review process for new medical uses: a medical use overlay zone that could be applied to properties in certain commercial zones with Planning Commission and City Council approval (a “floating” zone) and a Planned Development permit to review the related medical use project. Staff proposed the Planned Development Permit instead of a Conditional Use Permit (CUP) to consolidate the criteria that would be reviewed by the reviewing bodies (one set of criteria rather than zone criteria plus CUP findings) and because the language in the Planned Development permit is consistent with adopting an overlay zone. The Planned Development is the permit process used to approve projects in the City’s mixed-use overlay zones adopted in 2006 and 2007. The CUP findings for medical use, previously reviewed by the Commission, have been consolidated with criteria for the medical use zone and portions of the Code’s Development Plan Review findings and are now collectively entitled “Objectives” in the proposed medical overlay zone (see Section 1857 of the draft ordinance). Both an application for a medical use overlay zone and the related Planned Development application for a project must meet the objectives of the zone to be approved. The proposed objectives are discussed later in this report.

Concurrent Review

The Subcommittee discussed whether it would benefit the City or an applicant to allow review of the overlay zone application to precede Planned Development review so the applicant could have more certainty as to the appropriateness of a site for a medical use project prior to additional investment in a project. The Subcommittee agreed that it is difficult for the Planning Commission to adequately understand a project and its impact in a particular location without a fully developed project application, architectural plans, related studies including traffic/parking studies, and public comment. It was further agreed that if there are areas of the City where it can be seen that a medical use project would be inappropriate, the overlay zone should not be permitted in these areas. To that end, the Subcommittee supported allowing the medical overlay zone only in commercial areas where medical use is currently permitted. Allowing review of a proposed overlay zone without sufficient project information would likely result in time spent by all parties without a satisfactory outcome. The Subcommittee agreed that

applications for an overlay zone and medical use project should be submitted together and reviewed concurrently.

The following questions were outstanding as of the July Planning Commission meeting and were addressed by the Subcommittee:

Which commercial areas are appropriate to consider application of the medical overlay zone?

As discussed above, the Subcommittee agreed that applicants should be allowed to apply the medical use overlay zone to any commercial zone where medical use is currently allowed or allowed with a discretionary review. Attached is a table that lists all of the commercial zones in the City, divided into three categories based on how medical use is regulated in each zone: Medical Allowed; Medical Allowed with Restrictions; and, Medical Prohibited/Specific Plans. Each zone on the table is numbered and that number indicates the location of that zone on the attached zoning map. The two main commercial regulatory areas in the City (pedestrian area, commercial-residential transition area) are also included on the table and numbered; attached is a map of each of these areas. The zoning map was used as a base map so adjacent uses could be seen. A color key to the zoning map is included.

The commercial zones in which medical uses would not be permitted include the RMCP Zone (west side of Crescent Drive north of Wilshire), the mixed-use overlay zones, the C-3 (AR) Adaptive Reuse Zone (R-4 building on Wilshire), and the C-5 (old industrial) Zone. The areas with adopted specific plans permit only those uses allowed in the specific plans.

The draft ordinance also prohibits application of the medical overlay zone in the pedestrian-oriented areas.

What are the objectives (findings) for approval of a medical overlay zone and medical use project?

The Subcommittee concurred on one set of objectives proposed 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 project and medical uses:
 1. Will not result in any adverse 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,
 2. Will promote harmonious development in the area and will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed project.
- C. The proposed project and medical use will not result in any adverse 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 and the building housing the

medical use 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 project and medical use will contribute to and enhance the character of the neighborhood and location, will contribute positively to the image of the City and 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 project.
- E. The proposed project 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. The public benefit to the City shall, at a minimum, offset any long-term impacts to the City that result from allowing medical use in the City's limited commercial areas."

The proposed public benefit would be evaluated by the reviewing authority to determine if it is sufficient to offset the long-term impacts of medical use. The public benefit is not defined in the ordinance to allow for a variety of responses. The public benefit could include, but would not be limited to, a park, public plaza, other public open space, exceptional architecture, commitment to a particular type of medical practice providing jobs with higher wages, a particular medical service lacking in the City, or construction of affordable housing.

What restrictions/criteria should be applied to the medical overlay zone?

The draft ordinance proposes restrictions that would apply to all development in a medical overlay zone:

1. All restrictions applicable to the zone or underlying zone
2. Medical uses shall not be permitted on the ground floor of any building.
3. Free parking shall be provided for patrons and employees of medical uses in the project and parking shall be provided that complies with all applicable parking requirements in this chapter.

1. ~~2.~~⁹ The Planning Commission indicated it did not want development standards in a medical use overlay zone to deviate from the current development standards in the Code.
2. ~~3.~~⁸ The Planning Commission was also clear that medical uses should not be permitted on the ground floor citywide so as to maintain ground floor space for more pedestrian-oriented uses. The Planning Commission and Subcommittee did express concern that some retail uses with a small medical component, such as optometrists, are appropriate uses in a ground floor space and yet may be prevented from locating at the ground floor due to the medical component. To allow such businesses at the ground floor and in pedestrian-oriented areas, the ordinance proposes adding a definition of "retail business" to the Zoning Code that would allow a maximum of 200 square feet of a retail business' floor area to be used for a medical purpose and still be considered a retail

business. This would allow space for a small examination or consultation room in businesses such as optometrists, skin care retailers, and spas. The new definition of “retail businesses” would be included in the Zoning Code definitions and would be incorporated into the definition of “retail use” that currently is applied only in the pedestrian-oriented area.

- 3 4/ Since the Medical Overlay Zone would require parking that meets Code, should an applicant wish to apply for a project that does not have parking that meets Code, the applicant would have to apply for a variance from the code; or, if the property does not appear to meet the grounds for a variance, the applicant could apply for a text amendment, just as any applicant may do now. The effect of the proposed ordinance on existing buildings and businesses is discussed further at the end of this report.

What restrictions should apply to the proposed exception for existing buildings with parking?

Pursuant to City Council direction, the Planning Commission discussed an exception to the prohibition on medical use for existing buildings. The ordinance proposes that an existing building may convert general office space to medical use up to a maximum amount not to exceed 2,500 square feet in total floor area if all of the following are met:

1. The building is in a zone that currently allows medical uses, including in the pedestrian-oriented area.
2. If the building is in the pedestrian-oriented area, a Minor Accommodation permit would be required so staff may evaluate the application and make findings related to the impact of the medical use on the pedestrian area.
3. The building must contain one or more legal medical uses prior to a request for the exception.
4. No new medical uses permitted on the ground floor.
5. Onsite parking for the new medical use must meet current Code requirements.
6. No space occupied by general commercial use, or vacant and most recently occupied by general commercial use, may be demolished to provide parking spaces to satisfy the parking requirements for a medical use.
7. Medical use zoning clearance must be obtained in addition to any other required applications.

The ordinance proposes a 2,500 square-foot maximum conversion to medical use per building; once the 2,500 square foot maximum is converted, any new conversions would require a medical overlay zone. Such conversions would be tracked through a zoning clearance for which a fee would be required. Should the Planning Commission recommend a draft ordinance to the City Council, a separate fee resolution would also be presented to the City Council.

Impact on Existing Buildings and Businesses

If this ordinance is adopted by the City Council, as of the effective date of the ordinance, new medical use or conversion to medical use would no longer be a by-right permitted use in the City. This limitation

would affect all commercial properties including those with parking in excess of current Code, whether the property was developed with extra parking or received a building permit to re-stripe parking areas to create additional parking spaces. Owners wishing to add or convert to medical use would have to comply with the exception requirements or apply for a medical use overlay zone. Both the exception and the medical use overlay zone require parking that meets current Code. Buildings that wish to convert general office space to medical space or to add medical space and do not have, nor propose to provide parking that meets Code, must apply for an overlay zone and a variance or must propose a different overlay zone that would allow parking that does not meet current Code requirements.

The Planning Commission has heard public comment that additional regulation of medical uses in the City will increase rents for existing medical businesses. Staff has only anecdotal information on the potential impact of the proposed ordinance on the commercial leasing business in the City; however, should the Planning Commission recommend an ordinance to the City Council, staff is actively pursuing additional information that it intends to have available for the City Council to discuss the fiscal impact of the proposed ordinance.

GENERAL PLAN POLICIES

The proposed Zone Text Amendment is intended to address negative impacts from committing too much of the City's limited land area to medical uses and the impacts on residential properties when medical uses are adjacent of nearby. 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."¹

This 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 ordinance maintains the diversity of the City's commercial districts by further regulating new medical use which now occupies a substantial percentage of the city's limited commercial area.

Specific impacts addressed by the ordinance 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. A number of General Plan goals, policies and implementation strategies directly address these impacts and this is summarized in the attached document, "General Plan Consistency."

¹ Beverly Hills General Plan, April 30, 2010, Page 31

ENVIRONMENTAL ASSESSMENT

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 Guidelines², 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

PUBLIC OUTREACH AND NOTIFICATION

Action	Type of Notice	Required Notice Period	Required Notice Date	Actual Notice Date	Actual Notice Period
PC Public Hearing 6/10/10	Newspaper Notice	10 days	5/31/10	5/28/10	13 days
PC Public Hearing 7/22/10	Newspaper Notice	10 days	7/12/10	7/9/10	13 days
PC Public Hearing 10/14/10	Mailed Notice – to all commercial property owners	10 days	10/4/10	10/4/10	10 days
Report on Website	Min. 4 days prior to meeting	N/A	N/A	N/A	N/A

Public Comment

As of the time of this report, no letters or emails have been received by the Planning Division.

² The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

NEXT STEPS

It is recommended that the Planning Commission adopt a resolution forwarding a recommendation that the City Council adopt the subject ordinance.

Alternatively, the Planning Commission may consider the following actions:

1. Modify the draft ordinance or Resolution as appropriate
2. Direct staff to conduct additional analysis and continue the public hearing.

Report Reviewed By:

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Director of Community Development