



Planning Commission Report

Meeting Date: October 13, 2011

Subject: Discussion regarding a potential zone text amendment to the standards for overnight stays in specialty clinics.

Recommendation: Receive the report and provide direction to staff

REPORT SUMMARY

At its September 26, 2011 meeting, the Planning Commission directed staff to bring forward a narrowly focused discussion at the request of Mr. Rafael Gabbai. Consistent with Commission direction, this report:

- Provides background information regarding Overnight Stays; and
- Identifies existing regulations which restrict these operations.

DISCUSSION

The Overnight Stay Permit Ordinance was originally adopted by the City Council on January 8, 2002 and amended on February 6, 2004. Since the creation of this permit in 2002, there have been 7 applications submitted to the City. Four of these were approved administratively, two by the Planning Commission (one in 2004 and one in 2010) and one application that has been rejected by staff because the project did not meet the minimum standards required to request the permit. Potential issues to consider in granting an approval include:

- Impacts to the adjacent residential neighborhood
- Parking impacts
- Operational impacts including additional staff during extended hours

EXISTING REGULATIONS

In order to address these potential impacts, an application for an overnight stay permit may only be submitted for processing if it meets the following restrictions¹:

- No more than a total of four patients at one time may remain overnight in any specialty clinic.

¹ These restrictions are found in BHMC Section 10-3-1604.5

Attachment(s):

1. Overnight Stay Permit Regulations (BHMC Section 10-3-36.5)

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- Must provide Code-compliant on-site parking that shall not be less than one space per 350 square feet. Such on-site parking will be available free of charge for any employees using the facility from 6:00 p.m. to 7:00 a.m.
 - Not permitted on Saturday or Sunday.
 - Shall not discharge patients between 10:00 p.m. and 6:00 a.m.
 - Shall only be permitted for patients recovering from surgeries performed earlier in the day.
 - Shall not perform surgeries between 10:00 p.m. and 6:00 a.m.
 - Shall not permit family members or other visitors to stay at the clinic during overnight hours.
 - Shall comply with all applicable federal, state and local laws.
 - Shall not receive deliveries nor permit any loading activities during overnight hours unless conducted entirely within an enclosed structure and from a public right-of-way that is not adjacent to a residential or RMCP zone.
 - All doors that face a residential zone shall remain closed at all times during the overnight hours except for the immediate purpose of ingress or egress.
 - Employees shall not congregate behind the building or in any open area or public right-of-way separating the building from a residential or RMCP zone during overnight hours.
 - Specialty clinics, or the physicians or dentists who operate such specialty clinics, must be licensed by the State of California.
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- Permits granted pursuant to the Ordinance are specific to the applicant and do not run with the land.
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- Permits are also non-transferable and currently must be renewed every two years for surgery center in commercial zones and not adjacent to residential zones. However, if the surgery center located adjacent to residential zones all rights granted shall expire one year after the permit is granted.

FINDINGS

Once a project has been reviewed and determined to comply with the above restrictions, an application for an Overnight Stay Permit may be applied for pursuant to Section 10-3-36.5 of the Beverly Hills Municipal Code (Attachment 1).

The Director of Community Development is the reviewing authority for such applications, but may refer these matters to the Planning Commission. A request for an overnight stay permit may be approved if each of the following findings can be made:

A. The building housing the specialty clinic provides adequate on site 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 three hundred fifty (350) square feet of area for all existing buildings.

B. The on site parking provided is available free of charge for any employees using the specialty clinic between the hours of six o'clock (6:00) P.M. and seven o'clock (7:00) A.M. or such other parking arrangements as the reviewing authority determines are necessary to ensure that the overnight stay permit causes no impacts on adjacent streets.

C. The proposed hours of operation for the specialty clinic applying for the overnight stay permit will not adversely impact adjacent uses or the general health, safety or public welfare.

D. Granting the request for an overnight stay permit would not lead to an over concentration of such overnight stays in the subject building.

E. Granting the request for an overnight stay permit would not result in adverse impacts to the pedestrian environment adjacent to or in the vicinity of the site for the proposed overnight stay permit.

F. The building housing the specialty clinic provides adequate patient drop off/pick up locations that comply with all applicable parking requirements of this code, and granting the request for an overnight stay permit will not result in adverse impacts to traffic circulation on adjacent streets.

G. If the building housing the specialty clinic is located adjacent to a residential zone, the building provides adequate on site parking that, in addition to all other requirements, is located such that overnight usage of said parking facilities will not adversely impact the adjacent residences. In making its determination regarding the parking facilities provided, the reviewing authority may consider such factors as increased light and glare impacts on adjacent residences, noise impacts, impacts which alter the character of the adjacent residential neighborhood, and any other factors the reviewing authority believes are relevant to protecting the health, safety and general welfare of adjacent residents. (Ord. 02-O-2390, eff. 2-8-2002; amd. Ord. 04-O-2439, eff. 2-6-2004)

Potential Text Amendment

The issue raised at the September 26, 2011 hearing was related to the findings and restrictions related to parking. The code requires that the building housing the specialty clinic have code approved parking at a rate of at least 1 parking space for every 350 square feet of floor area in order to have overnight accommodations. The argument raised by Mr. Gabbai was that during the overnight hours for which the permit is requested, the building is not being occupied by other tenants and therefore there is ample parking within the building to accommodate the request for the four overnight patients and required staff without impacting the neighborhood because the building has over 100 parking spaces.

This may or may not be the case in the instant situation as staff has not analyzed this request. While a specific specialty clinic with an overnight stay component may not impact surrounding uses even though parking is provided at a rate of less than 1 per 350, existing restrictions limit the number of applications that are submitted to the City for review. An analysis of how many buildings may qualify to apply for an overnight stay permit if the parking requirement was amended has not been conducted, but could be analyzed if a text amendment were processed by staff. If the parking restriction was modified, it would allow for older buildings housing specialty clinics to apply for an Overnight Stay Permit, but the public process and findings would still be required for approval of such a permit.

Other amendments may be considered if staff is directed to pursue amending these development standards or if such an application is submitted by a property owner.

ATTACHMENT 1

REGULATIONS FOR OVERNIGHT STAY PERMITS

Article 36.5. Overnight Stay Permits

10-3-3651: PERMIT REQUIRED:

An overnight stay permit is required for all specialty clinics, as defined in article 16 of this chapter, to permit patients to remain overnight in such specialty clinics. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3652: REQUIRED FINDINGS:

The reviewing authority, as defined in section 10-3-3653 of this article, may only grant a request for an overnight stay permit if each of the following findings can be made:

- A. The building housing the specialty clinic provides adequate on site 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 three hundred fifty (350) square feet of area for all existing buildings.
- B. The on site parking provided is available free of charge for any employees using the specialty clinic between the hours of six o'clock (6:00) P.M. and seven o'clock (7:00) A.M. or such other parking arrangements as the reviewing authority determines are necessary to ensure that the overnight stay permit causes no impacts on adjacent streets.
- C. The proposed hours of operation for the specialty clinic applying for the overnight stay permit will not adversely impact adjacent uses or the general health, safety or public welfare.
- D. Granting the request for an overnight stay permit would not lead to an over concentration of such overnight stays in the subject building.
- E. Granting the request for an overnight stay permit would not result in adverse impacts to the pedestrian environment adjacent to or in the vicinity of the site for the proposed overnight stay permit.

- F. The building housing the specialty clinic provides adequate patient drop off/pick up locations that comply with all applicable parking requirements of this code, and granting the request for an overnight stay permit will not result in adverse impacts to traffic circulation on adjacent streets.
- G. If the building housing the specialty clinic is located adjacent to a residential zone, the building provides adequate on site parking that, in addition to all other requirements, is located such that overnight usage of said parking facilities will not adversely impact the adjacent residences. In making its determination regarding the parking facilities provided, the reviewing authority may consider such factors as increased light and glare impacts on adjacent residences, noise impacts, impacts which alter the character of the adjacent residential neighborhood, and any other factors the reviewing authority believes are relevant to protecting the health, safety and general welfare of adjacent residents. (Ord. 02-O-2390, eff. 2-8-2002; amd. Ord. 04-O-2439, eff. 2-6-2004)

10-3-3653: REVIEWING AUTHORITY:

Unless otherwise specified, the reviewing authority for an overnight stay permit shall be the director of planning and community development. If, in the opinion of the director, an application merits review by the planning commission, the director may refer such application to the planning commission and the planning commission shall serve as the reviewing authority and shall conduct a noticed public hearing regarding the requested overnight stay permit.

If the application for an overnight stay permit accompanies an application for any other type of discretionary approval from the planning commission or city council for the same site area, the planning commission or city council, as appropriate, shall be the reviewing authority for the application for an overnight stay permit and shall conduct a noticed public hearing regarding the requested overnight stay permit. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3654: NOTICE:

- A. A notice of application, in a form approved by the city, shall be posted in a conspicuous place on the subject site within three (3) days after an application for an overnight stay permit has been deemed complete. Such notice shall be visible from a distance of sixty feet (60') and shall remain posted in such conspicuous place for no less than ten (10) days. Within five (5) days of posting, the applicant for an overnight stay permit shall submit an affidavit to the city certifying such notice has been posted in compliance with this section.

- B. A notice of intended decision regarding an application for an overnight stay permit shall be mailed at least ten (10) days prior to any decision rendered by the director of planning and community development to all property owners and residential occupants within one hundred feet (100') of the exterior boundaries of a project site.
- C. A notice of public hearing shall be mailed at least ten (10) days prior to any hearing held by a reviewing authority other than the director of planning and community development, by United States mail, postage paid, to all property owners and occupants within three hundred feet (300') of the exterior boundaries of a project site, as shown on the latest equalized assessment roll.
- D. When a decision regarding an overnight stay permit is rendered by the director of planning and community development, then a notice of decision shall be mailed in the same manner as the notice of intended decision. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3655: RESTRICTIONS AND CONDITIONS:

The permittee shall comply with all restrictions set forth in section 10-3-1604.5D of this chapter. In addition, in granting an overnight stay permit, the reviewing authority may impose such further restrictions or conditions as it deems necessary or proper to satisfy the findings required for such permits. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3656: PERMIT NONTRANSFERABLE:

Each overnight stay permit issued pursuant to this article shall be specific to the applicant to which the overnight stay permit is granted and shall not run with the land. No overnight stay permit may be transferred, voluntarily or involuntarily, and any purported attempt to transfer an overnight stay permit shall be null and void and of no effect. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3657: DURATION OF PERMIT:

- A. **Nonresidential Zones:** Overnight stay permits issued pursuant to this article shall initially be valid for two (2) years from the date of issuance. Any overnight stay permits issued pursuant to the provisions of this article and all rights granted thereunder shall expire at that time, unless an application for renewal of the overnight stay permit is submitted to the director of planning and community development ("director") not less than sixty (60) days prior to the expiration of the permit. The renewal hearing shall be noticed and conducted in the same manner as the hearing for the initial overnight stay permit application. For any specialty clinic not located adjacent to a residential zone, the director may permanently renew the overnight stay permit after conducting the renewal hearing. Any specialty clinic permitting overnight stays which does not submit an application for renewal in accordance with the provisions of this section shall immediately cease such practices upon the expiration of its initial overnight stay permit.
- B. **Residential Zones:** Overnight stay permits issued to specialty clinics located adjacent to residential zones and all rights granted thereunder shall expire one year from the date of initial issuance, unless an application for renewal of the overnight stay permit is submitted to the director of planning and community development ("director") not less than sixty (60) days prior to the expiration of the permit. Overnight stay permits for specialty clinics located adjacent to residential zones renewed pursuant to this section and all rights granted thereunder shall expire two (2) years from the date of renewal, unless an application for subsequent renewal of the overnight stay permit is submitted to the director of planning and community development ("director") not less than sixty (60) days prior to the expiration of the permit. The renewal hearing shall be noticed and conducted in the same manner as the hearing for the initial overnight stay permit application. For any specialty clinic located adjacent to a residential zone, the director may renew the overnight stay permit for up to a two (2) year period. Any specialty clinic permitting overnight stays which does not submit an application for renewal in accordance with the provisions of this section shall immediately cease such practices upon the expiration of its initial overnight stay permit or any renewal thereof. (Ord. 02-O-2390, eff. 2-8-2002; amd. Ord. 04-O-2439, eff. 2-6-2004)

10-3-3658: REVOCATION OR MODIFICATION:

If the director of planning and community development determines that evidence could be presented to the planning commission which may support grounds for revocation or modification of an overnight stay permit, and the director believes that the planning commission may find that such evidence is adequate to support revocation or modification of the overnight stay permit, then the director may initiate a revocation proceeding before the planning commission.

Upon initiation of a revocation proceeding, the planning commission shall hold a public hearing regarding the possible revocation or modification of the overnight stay permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of an overnight stay permit. The planning commission, after such hearing, may revoke or modify the overnight stay permit if the commission determines that:

- A. The permittee has violated a condition of the overnight stay permit approval, or violated any provision of this code that governs, in part, the activity for which the overnight stay permit was granted or the land on which it is located; or
- B. The overnight stay permit was obtained in a fraudulent manner; or
- C. Operation of the overnight stay constitutes or creates a nuisance. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3659: APPEALS FROM DECISIONS:

The applicant or any person aggrieved by any decision regarding an overnight stay permit by a reviewing authority other than the city council may appeal the decision to the city council as provided in title 1, chapter 4, article 1 of this code. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3660: VIOLATIONS AND PENALTIES:

A violation of any of provision of this chapter is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine an imprisonment. Any person found to have violated any provision of this chapter shall be deemed guilty of a separate and distinct offense for each day, or portion thereof, during which such violation continues, and shall be punishable accordingly. (Ord. 02-O-2390, eff. 2-8-2002)

10-3-3661: COMPLIANCE WITH LICENSING REQUIREMENTS:

Nothing in this article shall be construed to relieve any specialty clinic from complying with the licensing requirements established by the specialty clinic's governing body. (Ord. 02-O-2390, eff. 2-8-2002)