

ORDINANCE NO. 10-5-1

AN ORDINANCE OF THE CITY OF COOPER CITY, FLORIDA AMENDING CHAPTER 21 “UNIFIED LAND DEVELOPMENT CODE”, SECTION 21-8 “DEFINITIONS”; IN ORDER TO AMEND DEFINITIONS RELATING TO REGULATION OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; AMENDING CHAPTER 23 “ZONING DISTRICTS”, ARTICLE IV “DISTRICT REGULATIONS” TO PROVIDE FOR AMENDED ZONING REGULATIONS RELATED TO REGULATION OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; AMENDING ARTICLE V “SUPPLEMENTARY REGULATIONS”, TO CREATE SUPPLEMENTAL REGULATIONS OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Cooper City (“City Commission”) finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with medical offices and clinics which provide “pain management” services and dispense narcotic controlled substances on-site as aided by those who act in concert with said establishments ; and

WHEREAS, the Miami Herald, Sun-Sentinel and other news media outlets have published numerous newspaper stories in the recent past describing a “pipeline” of trafficking

drugs from South Florida “pain management clinics” to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, increased criminal activity and other secondary effects including parking, noise, loitering and littering associated with the narcotics-related activities at such clinics is very significant and threatens to undermine the economic health of the City’s development and redevelopment efforts, by creating negative secondary effects which affect the commercial and residential properties surrounding these clinics; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, through adoption of SB 462 (2009); and

WHEREAS, despite such legislative efforts by the Florida Legislature, the state has only raised half of about \$1 million needed to establish the database, and implementation of these legislative mandates is delayed; and

WHEREAS, a recent Broward County grand jury reported that every three days, a new pain management clinic opens in Broward and Palm Beach counties; and

WHEREAS, in the last six months of 2008 alone, such clinics dispensed nearly 9 million doses of the controlled substance oxycodone in South Florida – the equivalent of more than two doses for every man, woman and child in Miami-Dade, Broward and Palm Beach counties; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic controlled substances on-site at medical clinics and offices (or in close proximity thereto), subject to specific exceptions; and

WHEREAS, during a public hearing on March 15, 2010, the Planning and Zoning Board, sitting as the City's Local Planning Agency, reviewed this Ordinance and made a recommendation to the City Commission; and

WHEREAS, following proper notice to the public and after having received input and participation by interested members of the public and staff, and having considered the recommendation of the Planning and Zoning Board, the City Commission finds this Ordinance consistent with its Comprehensive Plan, as well as Florida and federal law; and

WHEREAS, the City Commission finds that this Ordinance is consistent with the City's adopted Comprehensive Plan and necessary for the preservation of the public health, safety and welfare of the City's residents; and

WHEREAS, the City Commission has held two public hearings in accordance with Florida law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA:¹

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. City Code Amended. That Section 21-8 of Chapter 21 "Unified Development Code" of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 21-8. Definitions.

* * *

Medical office or clinic: An establishment where patients, who are not lodged overnight except for observation or emergency treatment, are admitted for examination and treatment by a

¹ Proposed additions to existing City Code text are indicated by an underline; proposed deletions from existing City Code text are indicated by ~~striketrough~~.

person or group of persons practicing any form of healing or health-building services to individuals, whether such persons be medical doctors, chiropractors, osteopaths, chiropradists, naturopaths, optometrists, dentists, or any such profession, the practice of which is lawful in the State of Florida. Pharmacies, as defined in this section, are not medical offices or clinics.

Pharmacy: Any establishment offering on-site dispensing of prescription drugs.

Retail, neighborhood: An establishment, not exceeding thirty thousand (30,000) square feet of gross feet area, serving a limited market area and engaged in the retail sale or rental, from the premises, of frequently or recurrently needed items for household use, but which shall not include any establishment which meets the definition of “pharmacy” as provided in this section. Typical uses include apparel stores, bakeries and delicatessens that sell all food prepared at retail on the premises, candy stores, drugstores, florists, garden supply stores, gift shops, grocery stores, hardware stores, hobby supply shops, ice cream shops, meat markets other than fish or seafood, jewelry stores, music and video tape rental stores, pet supply and grooming, souvenir shops, variety and general merchandise stores.

Section 3. City Code Amended. That Article IV “District Regulations” of Chapter 23 “Zoning Districts” of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 23-10. Schedule of Use Regulations.

COOPER CITY CODE

USE REGULATIONS SCHEDULE

Use Type	Zoning Districts																								
	Residential								Non-residential				Special			Planned									
	A1	E3	E2	E1	R1B	R1C	R2	TH1	R3	R4	O1	B2	B3	C1	C2	I1	P1	M1	X1	UCS	PRD	PMU	PCD	PID	
Commerical Uses																									

Personal care services											P	P	P										P	P	
Personal improvement											P	P	P										P		
Pharmacy											P	P	P										P	P	

Sec. 23-44. OP, Office park district.

* * *

(c) *Permitted uses.* In the OP district, no building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than the following:

- (6) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;
- (7) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

Sec. 23-46. B-1, Planned neighborhood business district.

* * *

(c) *Permitted uses.* In the B-1 district, no building or structure or part thereof shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

- (4) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

- (7) Personal improvement services;
- (8) Pharmacy, subject to Sec. 23-104.1.
- ~~(8)~~ (9) Repair, small appliance;
- ~~(9)~~ (10) Restaurant, general;
- ~~(10)~~ (11) Retail, neighborhood;
- ~~(11)~~ (12) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except in an antique store or as incidental to the sale of new merchandise;
- ~~(12)~~ (13) Sewage lift or pumping station, subject to section 23-107;
- ~~(13)~~ (14) Special residential facility, type 3, subject to section 23-109;
- (14) (15) Transformer substation, subject to section 23-112;
- ~~(15)~~ (16) Water or wastewater plant, local, subject to section 23-114.
- ~~(16)~~ (17) Community assembly, subject to the supplemental regulations contained in Section 23-95(b).

Sec. 23-48. B-2, Planned community business center district.

* * *

(c) *Permitted uses.* In the B-2 district, no building or structure or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

* * *

(7) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

- (10) Personal improvement services;
- (11) Pharmacy, subject to Sec. 23-104.1.
- ~~(11)~~ (12) Recreation, indoor;
- ~~(12)~~ (13) Repair, small appliance;
- ~~(13)~~ (14) Restaurant, general;
- ~~(14)~~ (15) Retail, community;
- ~~(15)~~ (16) Retail, neighborhood;
- ~~(16)~~ (17) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except in an antique store or as incidental to the sale of new merchandise;
- ~~(17)~~ (18) Sewage lift or pumping station, subject to section 23-107;
- ~~(18)~~ (19) Special residential facility, type 3, subject to section 23-109;
- ~~(19)~~ (20) Transformer substation, subject to section 23-112;
- ~~(20)~~ (21) Veterinary services, subject to section 23-113;
- ~~(21)~~ (22) Water or wastewater plant, local, subject to section 23-114.
- ~~(22)~~ (23) Community assembly, subject to the supplemental regulations contained in Section 23-95(b).

Sec. 23-50. B-3, General business district.

* * *

(b) *Permitted uses.* In the B-3 district, no building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following specified uses:

* * *

(8) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

- (13) Plant nursery, retail;
- (14) Pharmacy, subject to Sec. 23-104.1.
- ~~(14)~~ (15) Recreation, indoor;
- ~~(15)~~ (16) Recreation, outdoor;
- ~~(16)~~ (17) Repair, small appliance;
- ~~(17)~~ (18) Research and development;
- ~~(18)~~ (19) Restaurant, general;
- ~~(19)~~ (20) Restaurant, fast food;
- ~~(20)~~ (21) Retail, community;

- (21) (22) Retail, general, excluding any open air sale or display of machinery, farm implements or construction equipment and provided that the sale and rental of utility trailers shall be limited to display and storage of not more than ten (10) such trailers;
- (22) (23) Retail, neighborhood;
- (23) (24) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except within a fully enclosed building;
- (24) (25) Sewage lift or pumping station, subject to section 23-107;
- (25) (26) Special residential facility, type 3, subject to section 23-109;
- (26) (27) Transformer substation, subject to section 23-112;
- (27) (28) Vehicle and equipment repair, excluding painting and bumping or any open air sale or display of machinery, farm implements or construction equipment;
- (28) (29) Veterinary services, subject to section 23-113;
- (29) (30) Water or wastewater plant, local, subject to section 23-114.
- (30) (31) Community assembly, subject to the supplemental regulations contained in Section 23-95(b).

* * *

Sec. 23-56. I-1, Light industrial district.

* * *

(c) *Permitted uses.* No building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

- (1) Communication tower;
- (2) Building maintenance services;
- (3) Building supplies, and service businesses affiliated therewith;
- (4) Air conditioning, landscaping, painting, drywall, general irrigation, tile and fence contractors, and service business affiliated therewith;
- (5) Light manufacturing, provided that boat building or repair shall not be located within five hundred (500) feet of any residentially zoned property;
- (6) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;
- (7) Repair, small appliance;
- (8) Research and development;
- (9) Sewage lift or pumping station;
- (10) Transformer substation;
- (11) Utilities, major, limited to transformer and electrical switching station;
- (12) Water or wastewater plant, local;
- (13) Wholesale and warehousing, provided that all such activities shall occur in buildings for single use purposes not to be less than one thousand seven hundred fifty (1,750) square feet in gross floor area, in accordance with the following:

a. Wholesale and/or warehousing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall only be distributed to licensed health care practitioners, pharmacists, or other persons duly licensed to purchase or receive such substances in accordance with Florida law.

b. Except as prohibited by the above, Special sales, open to the public, may be allowed by special permit up to four (4) times per year to allow for the disposal of excess

inventory by warehouses, distribution and storage buildings and wholesale showrooms, pursuant to the provisions of section 9-28 of this code.

(14) Professional office uses;

(15) Accessory commercial uses, including but not limited to, coffee shops, sandwich shops, restaurants, office supplies and equipment, and copy and printing centers ~~and pharmacies~~; provided, however, that the total area for such accessory uses may not consume more than twenty percent (20%) of the square footage of any single building within the industrial development;

* * *

Sec. 23-60. M/I, Medical/Institutional district.

* * *

(c) *Permitted uses.* In the M/I district, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the following uses:

(1) Hospital;

(2) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

(3) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

Sec. 23-70. PMUD, Planned mixed-use development district.

* * *

(d) *Permitted uses.* In the PMUD District, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the following uses:

* * *

(10) Drug store/pharmacy, subject to Sec. 23-104.1;

* * *

(15) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

Sec. 23-72. PCD, Planned commercial development district.

(a) *Permitted uses.* In the PCD district, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the following uses:

- (7) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;
- (8) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

Section 4. City Code Amended. That Section 23-84 of Article V “Supplementary Regulations” of Chapter 23 “Zoning Districts” of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 23-84. Accessory uses.

* * *

(c) *Office buildings.* Buildings used primarily for business and professional or medical office uses may also include commercial establishments providing goods and services to the patrons and employees of the principal uses, subject to the following supplementary regulations.

(1) The aggregate gross interior floor area of the accessory uses shall not exceed five (5) percent of the total gross floor area of the office park or five (5) percent of the gross floor area of the building in which the accessory uses are located.

(2) The permitted accessory uses shall include only the following:

- a. newsstand,
- b. florist, and/or
- e. ~~pharmacy,~~ and
- d. c. barbershop or beauty shop.

Section 5. City Code Amended. That Article V “Supplementary Regulations” of Chapter 23 “Zoning Districts” of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec 23-101.1. Medical offices or clinics, and medical or dental laboratories.

Medical offices or clinics, and medical or dental laboratories (“medical uses”), as defined in Section 21-8 of the Land Development Code, in whatever districts permitted herein, shall be subject to the following supplemental regulations:

(a) On-site dispensing of controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, is prohibited, unless otherwise expressly permitted as follows:

- (1) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

- (2) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care at a hospital, nursing facility, institution or asylum, ambulatory surgical center, or hospice which is licensed in this state.
- (3) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care at an intermediate care facility for the developmentally disabled which is licensed in this state.
- (4) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- (5) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(b) Medical offices or clinics, and medical or dental laboratories (“medical uses”) shall also be subject to Sec. 23-104.1.

* * *

Sec 23-104.1. Pharmacies, medical offices or clinics, and medical or dental laboratories - location restrictions.

(a) Pharmacies.

(1) Unless approved as a conditional use pursuant to Section 23-152 of the Code of Ordinances, no pharmacy shall be permitted to locate within the same establishment, within the same shopping center, or within the same parcel of land or tract of any medical office or clinic, or any medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time.

(2) Outparcels. The location restriction of subsection (1) above shall not apply to a pharmacy which is located within an outparcel as defined in Section 21-8 of the Code, within the same shopping center, or within the same parcel of land or tract, as a medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time. However, no pharmacy shall be permitted to locate within the same outparcel as any medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, unless approved as a conditional use.

(b) Medical Offices or Clinics, or Medical or Dental Laboratories.

(1) Unless approved as a conditional use pursuant to Section 23-152 of the Code of Ordinances, no medical office or clinic, or any medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled

substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall be permitted to locate within the same establishment, within the same shopping center, or within the same parcel of land or tract of any pharmacy.

(2) Outparcels. The location restriction of subsection (1) above shall not apply to a medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, which is located within an outparcel as defined in Section 21-8 of the Code, within the same shopping center, or within the same parcel of land or tract, as a pharmacy. However, no medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall be permitted to locate within the same outparcel as a pharmacy, unless approved as a conditional use.

(c) The foregoing location restrictions shall not apply to pharmacies or medical offices or clinics, or medical or dental laboratories, for which an application for a business tax receipt has been submitted prior to the date of adoption of this Ordinance.

(d) These supplemental regulations are not to be interpreted to limit the lawful operation of a hospital or institution or asylum separately defined and permitted in zoning districts according to separate regulations.

* * *

Section 6. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 8. Inclusion in the Code. That it is the intention of the City Commission of the City of Cooper City, and it is hereby ordained that the provisions of this Ordinance shall

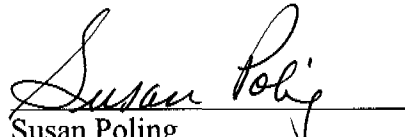
become and be made part of the Cooper City Code of Ordinances; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section" or other appropriate word.

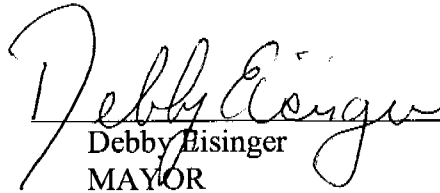
Section 9. Effective Date. That this Ordinance shall take effect immediately upon adoption at second reading.

PASSED AND ADOPTED on first reading this 13th day of April, 2010.

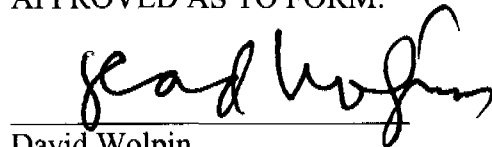
PASSED AND FINAL ADOPTION on second reading this 25th day of May, 2010.

ATTEST:


Susan Poling
CITY CLERK


Debby Eisinger
MAYOR

APPROVED AS TO FORM:


David Wolpin
CITY ATTORNEY


ROLL CALL:

Mayor Eisinger Yes
Commissioner Mallozzi Yes
Commissioner Sims Yes
Commissioner de Jesus Yes
Commissioner Curran Yes



MEMORANDUM

To: City Commission Members

From: Matt Wood, Growth Management Director 

Thru: Bruce Loucks, City Manager

Date: March 17, 2010

Re: Revision to Section 21-8 and Chapter 23 for Pharmacy uses

ANALYSIS: The City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on "pain management clinics" to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for municipal zoning regulation.

Current City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (PMUD) for which the use is anticipated would be considered appropriate in the Monterra Development which has that zoning designation. Similarly, medical office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted.

The attached draft ordinance would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating co-location of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location
5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in this district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

PLANNING AND ZONING BOARD RECOMMENDATION: The Planning and Zoning Board, at their meeting on March 15, 2010, motioned to table the changes to amend section 21-8 and chapter 23, of the Municipal Code of Ordinances relative pharmacies and to request that the Commission extend the moratorium to a date that will permit the Board to further investigate the scope of this ordinance including scheduling a workshop; and the City Attorney providing them with similar ordinances and other background material. Motion made by Mr. Aronson and seconded by Mr. Sands. On roll call there were five aye votes and four no votes made by Mr. Rodriguez, Mr. Valenti, Mr. Konhauzer, and Mr. Roper. Motion was approved.

4. NEW BUSINESS:

A. DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES

Mr. Wood explained that the City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on “pain management clinics” to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for municipal zoning regulation.

Current City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (PMUD) for which the use is anticipated would be considered appropriate in the Monterra Development which has that zoning designation. Similarly, medical office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted.

Mr. Wood continued to explain that the attached draft ordinance would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating co-location of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location
5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in this district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

As requested by the Board at the last meeting, the City Attorney has provided additional information which is included as backup material to this report.

Mr. Wood concluded that the Planning and Zoning Board is requested to discuss and comment on the proposed Code revision. The Board’s recommendation will be forwarded to the City Commission for action.

Ms. Lundgren commented that as requested at the last meeting she has provided additional information to the packets that addresses the 2009 Legislation that was passed concerning pain

management clinic regulation and it has unfortunately yet to be implemented. The 2009 Legislation did provide for registration of clinics that engage in pain management services and dispense these controlled substances on site. However, the registration requirement doesn't have any real effect with any sanctions or administrative penalties as of yet. There is rule making that has been engaged in at this time to address further regulation, but at this point there is no real stick with this legislation. Furthermore although the Legislation provided for an electronic prescription drug monitoring program that would prevent the persons from coming to these clinics, from doctor shopping from one clinic after another, that has yet to be put into effect due to the cost of this monitoring program. The Department of Health is struggling with financial cutbacks. It is expected to be another year before there is any effect monitoring program as that Legislation had contemplated. Although we are early in the Legislative Session for 2010 there have been a couple of Legislative bills proposed to address the issue that we are dealing with. One of those is going to address the pain clinic operation and management by doctors. Providing that doctors must have no history of disciplinary action if they are to open a pain management clinic and another would ban the dispensing of more than a 72 hour supply of these controlled narcotics on site at a clinic. She commented that it remains to be seen if these bills will go forward, but at this time the problem continues to spread across south Florida with very unfortunate consequence, which she asked Commander Stoner to address as well. She then commented that she has also provided a number of cities statuses relative their regulations. She added that following the distribution of this report, she mentioned that Boca Raton has passed regulations on first reading which is essentially the same this ordinance as well as Palm Beach Gardens, which is prohibiting the on-site dispensing of controlled substances. She then remarked that she had included several newspaper articles that are related to these clinics. Despite all the efforts statewide at the Legislative level what Staff has presented in the form of this code change is another opportunity for them to try and get a handle on this huge issue.

Mr. Roper asked Commander Stoner if he would give the Board insight into whether we have had any problems or are currently having any problems as it relates to this matter.

Commander Marvin Stoner, Broward Sheriff's Office introduced himself and then introduced Detective Darrin Rush, and explained that Detective Rush was one of the three main persons that are responsible for what activity they have been able to develop at the Simfa Rose Pharmacy. He held up a stack of papers and explained that everything in that stack was an arrest just at that location. He commented that he has been in this City for 25 years and he has never seen anything like this and this was just a little over a year and a half. It has gotten to the point where you have a facility probably no bigger than the inside of these table dispensing Oxycontin pills. It is strictly a cash and carry business. As a brief overview they go in there for Oxycontin. They go in there with prescriptions, which are in upwards of 250 pills in a script. He didn't know who could use 250 Oxycontin pills at any given time in your life. He said that not only are they getting the script for 250 pills, but as the Detective can explain is that many of the people they arrest already have 250, 500, 750 pills in their possession that they have shopped other pain clinics for. Not only are they finding these people to be in possession of this drug, but they have also been in possession of marijuana, cocaine, heroine and xanax. He remarked that the biggest problems they have is what goes on once they walk out of the pharmacy. They can't even wait to get out of the parking lot to pass the pills around, to crush them and snort them, to crush them, heat them and stick them in their arms. They are finding syringes, gauze and everything else

around there. The service stations and all of the other establishments nearby have a been putting up signs to indicate don't use the bathrooms and they aren't going to let them in for the simple reason is that once they get in there they are out of sight and want to ingest their drugs. They go into these places to sit down and wait because their prescriptions aren't going to be filled immediately and there are so many people there that the business is heavy. During the time these people are in the parking lot, they have had them for disorderly conduct, urinating in public, banging on doors trying to get into other establishments and even trying to get inside the pharmacy when they are closed and signs up that say they are closed, but they can't wait. Many of these people are in the parking lot because they have no place to go because they are not Cooper City residents. Better than three fourths of them from out of not only the County, but out of State. We are known as the pill mill factory in the Country. They are coming down from Kentucky, Tennessee, Georgia and it has gotten to the point now where they know our deputies are in the parking lot, they will stop on their way in Orlando just to rent a car with State tags on it so that they are not as obvious. He passed around some photos to the Board. He commented that not only do they get the violations for narcotics, but they have traffic violations and suspended licenses, stolen invalid tags, and stolen cars. They have people they have arrested for loitering, because they are hanging around waiting. They have arrested those for violation of probation, and that violation of probation generally has to do with drugs, burglary, robbery and it has to do with assaults. These are the type of people that are coming into our neighborhoods. They have had one armed robbery at this facility and that is because it is full of drugs and it's full of cash. This is a cash and carry business only. He remarked that when we talk about the individuals that have come into this location, some of the people they have stopped and some of the equipment they carry with them and he showed a photo.

Ms. McCoy interjected that she would like to know where this facility is located.

Commander Stoner responded that this facility is located in The Center, which is on Stirling Road and Palm Avenue.

Mr. Aronson asked if this was a co-location issue.

Commander Stoner responded no, they only distribute and don't prescribe.

Mr. Aronson commented that the ordinance they are trying to pass is an ordinance that prevents the co-location of a pain clinic with a pharmacy, so the ordinance they are looking at tonight would not affect this kind of operation or would it.

Commander Stoner responded that in a manner of speaking, no, but the problem is that this gentleman wants to move to a bigger location.

Mr. Aronson didn't doubt anything Commander Stoner was saying, but was simply questioning whether the type of ordinance the Board is seeking to pass would have the affect of preventing or restricting this type of operation. He was not sure that was going to happen.

Commander Stoner remarked that this operation is here right now and is a pharmacy. Take this operation and add a pain clinic to it that wants to come into the City, double it, triple it, and

quadruple it. Now you have maybe an 800 square foot facility doing one thing, dealing out prescription medicine with a prescription. Now put the pain clinic next to it and put the pill mill within it and the amount of people that will be there. What you see right here will be what you see there. Everything will not be in one location. They will be there for a longer period of time. They will come and see their doctor, they will get their MRI, and they will wait and wait until they get their pills and leave. He pointed out the locations that this place is in by itself. Down the street you have a high school, around the corner you have a middle school, and right next to it you have a Temple. Behind it you have a church. Going in the other direction on the west side of SW 100th Avenue, you have a Dairy Queen, a Wendy's and a sub shop. Every day kids walk through here. The same thing will happen no matter where in this City you put the next step up which would be a pain clinic. Maybe there isn't a lot they can do with this place, he didn't know, except what they are trying to do with it, but you can stop what is going to happen next. That would be the biggest thing this Board could do by putting this ordinance forth tonight. He remarked that this isn't over and until the Florida Legislature does something with it, this will continue. These places are all over Davie and everywhere else and now they are trying to come into Cooper City. He mentioned there is space for them in some of our shopping centers and all they have to do is come in and set up and you would have exactly what this is many times over.

MOTION: TO APPROVE FOR DISCUSSION CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES. MOTION MADE BY MR. SANDS AND SECONDED BY MS. SORI. Motion was approved by voice vote.

Ms. Sori commented that she would approve this tonight because the Commander thinks it's necessary for our health, welfare and safety. She then asked what happens with legitimate pain clinics. Wouldn't everything be solved if this was done on a State level instead of going city by city that the State bans these types of pain clinics? She wanted to know if on the State level or the County level that only doctors within their doctor offices can prescribe these pills or drugs that the people would not go to these pain clinics for their prescriptions, but would have to go to their doctors. There are certain aspects of the proposal coming from Tallahassee saying only prescribing a 72 hour supply of these drugs and cancer patients need a lot more than a 72 hour supply. There has to be exceptions to all of this. She wants to know what happens if a legitimate pain clinic comes into our City and what they can do about it.

Mr. Konhauzer remarked that they discussed this a couple of weeks ago and since then every paper he read had exactly what everyone was discussing and he was shocked and felt uncomfortable they didn't pass it at their last meeting and thanked Staff and Commander Stoner for bringing this to the Board's attention.

Mr. Valenti commented that he has missed the last 2 meetings and will pass this. He remarked that what bothers him is listening to Commander Stoner and asked what they can do with the doctors that prescribe these pills. Not just a script, but 250 pills and who in their right mind would use that many pills. He mentioned that he does get some samples from his doctor because Medicare doesn't everything the doctor wants him to take, but even at that he doesn't get 200, but maybe a week or two supply. Isn't there some agency or the State that can go after these

doctors who write these prescriptions? They are walking in with legitimate prescriptions to get these mega pills and what happens there.

Ms. Keirnan commented that a lot of these prescriptions are not legitimate and are fraudulent. She mentioned that she used to be a police officer and worked a lot of fraud cases where they have fraudulent scripts and have worked on suicides where they have overdosed an Oxycontin. She said they have hundreds and hundreds of these pills. So the Board can understand how strong on Oxycontin pill is, she explained that one 80mg crushed up is the equivalent to 16 Percocets, just one of these pills and this is what these people are taking. She commended BSO and knows they are on top of these people hardcore, because she has seen them in the past two weeks at least 6 or 7 times. She remarked that it does draw so much crime and asked if the pharmacy has been burglarized yet. She explained they had a pain clinic open in Plantation. Just inside of two months they had a robbery in the plaza behind it, they had people calling all the time about everybody hanging in the parking lot and scaring them. She mentioned that it is also taxing on the police. It took hours and hours of time to do the paperwork and it will get out of control if more of these move in.

Ms. McCoy commented that with a traditional nationally branded pharmacy are they going to be allowed to have an in-office clinic and be able to write their scripts and is this included in this ordinance.

Ms. Lundgren responded yes and the distinction is that the CVS, Walgreens and Publix and maybe some other grocery stores also do in-store clinics, but they are staffed by nurse practitioners who are not authorized under Florida Law to prescribe controlled substances. Those urgent care clinics would not be affected by this.

Mr. Aronson wanted to know if there was a definition in the draft ordinance of healthcare practitioner and then asked if a healthcare practitioner was a medical doctor or is it something else less than that. He said that it is referred to healthcare practitioner in the ordinance that a pharmacist or healthcare practitioner would administrate. If a healthcare practitioner was a medical doctor then they should be careful if they are seeking to regulate medical doctors who are regulated by a far different set of guidelines than municipal ordinances. They need to make sure that they are sticking within the municipal code and zoning code that they are confined by. He then referred to page 4 of the proposed ordinance and what is retail neighborhood and then talks about an establishment not exceeding...but he remarked that he was not making the connection as to what the term retail neighborhood means when he reads the definition. He then referred to the work “establishment” and this ordinance is trying to deal with co-location and didn’t know if establishment was defined either. He explained that his problem with what they are trying to do is that he believes that what Commander Stoner and the material he has read is that there is a legitimate problem and he believes they need to do something to regulate it. What he fails to see is that how this ordinance solves the problem, because if what is suggested is that pharmacies need to be better regulated from a zoning standpoint, then he could live with the fact that they don’t want pharmacies in office buildings because a pharmacy is a retail use and that makes sense to him. But, if what they are trying to do is limit this co-location because they don’t want pain clinics dispensing drugs as a pharmacy, then these guys will be smart and rent suite 3A and 2B and will have their pharmacy in one and their pain clinic in the other and you would walk

across the hall to get their drugs. He did not believe this ordinance is going to solve the problem. He expressed his concern that legitimate doctors and Mr. Sands gave the example at the last meeting that the pediatrician that dispenses Adderall is dispensing a regulated drug and he didn't think that was what they were intending to do either. He expressed concerned that they were trying to solve something in a way that they are not solving it. He commented that he was uncomfortable passing an ordinance telling a medical doctor that he can only give a patient a 72 hour supply of some sort of medication. He commented that he has back problems and if his doctor was willing to give him a weeks worth of free samples he would give him a hug and there are a lot of people who need these drugs and there is a healthcare problem and if doctors can solve that problem for patients, he thought they should. He commented that they shouldn't be regulating doctors and should only be regulating uses. That is what the zoning code is for. He was sure there is other governing bodies that can do this far better than they can. He agreed they need to do something, but didn't think this was going to solve the problem.

Ms. Lundgren commented that healthcare practitioner dove-tails with the State Statute that was passed last year that requires the monitoring of the dispensing program. Under the State law a healthcare practitioner can administer certain types of controlled substances perhaps like the epidural drip that they can do.

Mr. Aronson interjected that this was other than a medical doctor.

Ms. Lundgren remarked that was right and would be like a nurse who has the ability to give like an epidural shot whereas a nurse cannot prescribe, but they could give....

Mr. Aronson interjected that a nurse is a healthcare practitioner, but they cannot write prescriptions for Oxycontin.

Ms. Lundgren responded no they cannot, but that wording you were looking at deals with the administration directly to a patient and wanted to keep that wording broad with the term healthcare practitioner because it dove-tails with the State Statutes.

Mr. Aronson then wanted to know if that would apply to a doctor.

Ms. Lundgren responded that it does apply to a doctor because a doctor is a healthcare practitioner and is inclusive. The point of the on-site dispensing regulation.....

Mr. Aronson interjected that he didn't think that a zoning ordinance should regulate the way the doctor operates his medical practice. He remarked that they were limited to the uses you could put to a particular premises.

Mr. Markley commented that this proposed code change is not an attempt to regulate how medical practitioners are licensed. It does not attempt to change their abilities and that would still be through their regulatory agencies. Any local business tax receipt that comes in when it is a medical use they provide their license from the respective regulation agency. He commented that we do not attempt to change anything with that. This is just recognizing within their use.

Mr. Aronson interjected that he was not talking about licensing, but was talking about the doctor doing his job. In Section 23-110 tells the doctor what he can and cannot do in terms of prescribing treatment to his patient.

Ms. Lundgren responded that she would have to correct Mr. Aronson on that because they are not regulating what he prescribes. He can prescribe all day long, he just can't dispense at that location and that is where the land use issue comes in when you have a conflict with a doctor who is prescribing and dispensing onsite. This is a huge financial benefit to these establishments and that is where this has skyrocketed into such a huge problem with people paying cash, getting their prescription, getting their dispensation of a huge amount of drugs.

Mr. Aronson remarked that he understands that, but he believes if what they are concerned about is you don't want this co-location and the way we regulate it is that we say a medical office, because the locations of the medical offices is in the zoning location, cannot have a retail operation out of it, which would be a pharmacy, he could live with that. However, we cannot tell a doctor that he cannot give his patients drugs. The doctor makes that decision and he believed that they are going beyond what they have the ability to regulate. He is not saying that this is not a problem, but didn't know if they were going about it in the most efficient way.

Ms. Lundgren responded that she understands and goes back to the first question that was asked and which is this is the most efficient way to regulate this issue and wouldn't they be better if the State was addressing this and regulating this. Why are we in the position of doing this at the local level through our zoning code and it does seem odd and she understands that. It is because of the State of Florida's lack of regulation in this area that has put us in this situation where we are fighting to deal with it at the local ordinance level. As other cities have put these regulations into place, we would be the one without a mechanism to address these onsite dispensing clinics with the problems that are associated with them. From her perspective, she remarked that is the land use issue and when you have one of these onsite dispensing clinics and next to it you have the family dry-cleaner, and family businesses in the same plaza and people have to lock their doors like Commander Stoner was saying. The businesses can't let anyone use their bathrooms and people are afraid to come to our commercial areas and frequent our plazas because of these kinds of businesses. It will hurt the local economy and that's the land use side that this is addressing.

Mr. Aronson commented that maybe he was not understanding the ordinance because this doesn't regulate a pain clinic which doesn't have a pharmacy. So, if he was a doctor he could open up a pain clinic down the street at whatever retail center.

Ms. Lundgren responded that is correct, but when you read about these issues you will see that there are very few of the clinics that are just prescribing. They are dispensing onsite because that is the most lucrative way for them to

Mr. Aronson again interjected that if he couldn't dispense on site, so what he would do is rent a space over here and then 3 or 4 bays down if he was permitted in the zoning district to open a pharmacy then you cannot prevent a company that he owns separately from opening a pharmacy.

Ms. Lundgren responded that's true if its assessment establishment...

Mr. Aronson asked what the definition of establishment is and that was one of his questions. He explained that he was not trying to argue, but that he was a business lawyer, but the wheels start turning when someone comes to him says this is my problem and how do you get me to legally operate. He remarked that he open Dr. Smith's pain center and down the street you open some pharmacy under a different name, which is owned by the same entity and all he would have to say is that there is a pharmacy down the street where you can go and get the prescription filled right now. Then you didn't solve the problem because if that's not co-location then we are wasting our time. We would not have helped ourselves.

Mr. Konhauzer asked why we can't change the wording to incorporate that so that we are all encompassing.

Mr. Aronson responded that he didn't think you could.

Ms. Sori remarked that you could change the wording on medical practitioner. No doctor wants to be called a medical practitioner they want to be called medical doctor.

Mr. Aronson commented that was where we get beyond our level of regulations. There has got to be a better way to get to these people. He didn't think they were accomplishing it and all they would be doing is to create is a small hurdle and they are going to jump it really quick. He wants to know the better way to deal with them.

Ms. Lundgren remarked that there would be some support for a change that would clearly explain definition of establishment for purposes of this ordinance because it was her understanding in talking with Staff is that we have administrative policy of the establishment being.....

Mr. Markley responded that this Board has already addressed and that is already a precedence set. Establishment has been determined in the City. The most recent case that some of the Board may remember was particularly on signage as to what an establishment is as far as you may have one bay that has multiple local business tax receipts, but you have to go outside in another door that would create another establishment. He expressed that he would impress heavily on the Board that this is one tool and by no means meant to be the solution to the various challenges. There are other law enforcement actions that are being pursued and there are some State actions that some of our elected officials and some of them have talked to the State Legislature to impress upon them the urgency, so this is just the one part that would be the Planning and Zoning part that this Board and the City could do as a municipal part of the solution.

Mr. Sands asked Commander Stoner that if the Board adopted this ordinance how it was going to help them enforce the laws to keep this from coming into Cooper City. He wanted to know what this code change would do to help law enforcement.

Commander Stoner responded that the way he has interpreted this is that by giving them the ability not to have these clinics operate within our City and with pharmacies down the road,

whether we can do anything with what we have right now or not, he wasn't sure other than what they are already doing now and they will continue to do that. The idea is how we better align ourselves in the future so that we don't continue to have this problem. He said that was the really best overall broad answer as to what they are trying to do or the attorney's and what Planning and Zoning are trying to put together.

Mr. Sands commented that he heard last week that this was a major issue in Cooper City and then he started hearing arrest reports and he asked if it was a pain clinic and was told that it was not a pain clinic and that it's a pharmacy. So when they were told at the last meeting that there were no pain clinics in Cooper City, it's true, but we have a pharmacy problem right now. He expressed his concern about what they are doing is that law enforcement is doing everything they can do in trying to come up with creative solutions to this. We all know the criminals are smart. They keep figuring out another way around it and it has already been stated that they are going to figure out a way around the code. If we separate the emotional issue and the fact that this is a serious problem down here, a serious legal issue and these people shouldn't be in our City and he agrees with all that. He commented that if we adopt this code, they would seriously restrict for instance a pediatrician who wants to distribute Adderall, so that its available for a parent who doesn't have to take that prescription and go to Walgreen's, code is going to tell that doctor that you can't do that because they are being included in this ordinance. He expressed his personal opinion that he agreed with everyone that something needs to be done about this, but he agreed with Mr. Aronson in that he didn't know that this ordinance was it. He stressed that there is a law enforcement issue and a code enforcement issue and he was concerned about the restrictiveness on the good doctors, like a pediatrician. If a Pediatric Associates wanted to come into Cooper City and they wanted to have their own pharmacy they couldn't dispense Adderall on the premises under this ordinance. He said that Pediatric Associates is a big organization and would be very careful about how they are distributing this and would not be a pain clinic that is going to be an irresponsible pharmacy. This is where his concern is at with the code.

Mr. Roper commented that pain medicine is a problem not only in Cooper City, Broward County, but nationwide and he didn't know if there any one thing that they can do. He thought they what they are doing to trying to do something that would possibly deter something that could happen in the future. Yes, there would probably be some doctors that will be upset because they are not going to be able to give out more than 72 hours worth of medicine. He didn't think they were here to make every doctor happy. He thought they were here to look at what they can do to help the many families and children who are on these drugs and they do it daily. He remarked that he has a 45 year old son that is a drug addict. He remarked that anything they can do to deter and possibly help law enforcement then he thought they were doing a great job.

Ms. Sori wanted to know if there was any chance they can delay this to one more meeting until Mr. Aronson's and Mr. Sand's concerns are addressed. They should not be regulating doctors. However, they do need to do something and agreed with Mr. Roper and any little thing they can do to help keep these people out of here so much the better. She remarked that they cannot tell doctors they can't prescribe drugs. Even if they have to get so specific in this ordinance that they say pain medication, or controlled narcotic substances and give examples of what the substances are, but you can't tell a doctor they can't give a patient medication for more than 72 hours of

drugs. She explained that when her children were sick their doctor would give her the entire prescription. You can't stop doctors from doing that, so maybe they need to rewrite and tighten the ordinance so it meets what they are trying to do.

Mr. Konhauzer commented that he agrees with everything that has been said tonight, except the 72 hours. He explained that he just watched his mother-in-law go through 8 months of horror with cancer throughout her body and watched her in horrendous pain. He remarked that 72 hours wouldn't handle it. She was given liquid morphine, oxycodone and other types of drugs through an Oncologist who prescribed medication. A person that is 70 or 80 years old is not going to be able to get their prescriptions re-filled every four days. These are long term ailments and are not a week. Something needs to be put in this ordinance that needs to protect that, in his opinion.

Mr. Rodriguez asked when the moratorium that is in effect now expires.

Ms. Lundgren responded that the moratorium expires on April 13th, and that is why they are seeking a recommendation tonight on this ordinance. She commented that she was willing to get recommendations from the Board on changing this language, striking and/or opening up and extending that 72 hour period within this exception would certainly get recommendations tonight. Again, this is for a dispensing restriction and not a prescribing restriction. That is certainly something that is within the Board's ability to recommend as a change to these proposed regulations to extend that 72 hour period.

Mr. Rodriguez then asked what prevents the City from extending the moratorium.

Ms. Lundgren responded that the City could extend the moratorium up to three months, which is the limit under the moratorium ordinance.

Mr. Rodriguez asked how indefinite is that and can they keep re-extending?

Ms. Lundgren responded that it is important that it be moved along from a legal standpoint in order to preserve the integrity of the regulation. They had had six months and it has taken a good deal of time for them and for Staff to research and prepare these regulations and that is culminating what is before the Board. That is why it is recommended they should move forward with a vote for some sort of recommendation for changes to the extent that you want to see some changes made for the Commission.

Mr. Roper commented they can prescribe medicine for more than 72 hours, but they cannot give out more than 72 hours worth of pain medicine out of their office, but they can prescribe...

Mr. Konhauzer interjected that a pharmacy can give 75 Oxycodone pills if it was prescribed.

Several Board members said yes a pharmacy can fill a prescription for that.

Mr. Rodriguez commented that anything that gives BSO another tool, because that is all that this is and it is by far not what is going to solve this. He was in favor of and thought that any issues

that come up they can always amend the ordinance or provide variances if it is a specific Pediatric Associates that comes in. That is not what this is for and didn't think they would get hurt by this.

Mr. Valenti asked Commander Stoner what is the basic problem with the pain clinic and is it a person that goes in there for a prescription for 250 pills and are the legitimate people that go to pain clinics and get a prescription that they just left their doctor for and does that happen.

Commander Stoner responded that he was not all that familiar with the clientele, except for the ones that he has seen and the ones that go in. These are the ones that are going in with the idea of picking up 250 pills and going back to their home State and then selling those pills.

Mr. Valenti agreed with Commander Stoner, but remarked there seems to be two issues. He didn't know of a doctor that would prescribe medicine for 250 pills or 150 pills. He commented that he may get 30 days if he gets that. He stated that he was still in favor of this ordinance because it is a tool that law enforcement can use and if it helps 5% which is better than what they have now.

Ms. McCoy commented that the problem she has with this ordinance even though she realizes the need for it just like everyone else, but it comes down to the zoning aspect of it and thinks it needs to be tightened versus permitted uses versus non-permitted uses in each one of the zoning areas. She thought that it gets all clouded up with other stuff that is in here when really from a zoning perspective and in the office category it is not a permitted use any longer. If you don't want to have a retail pharmacy in an office industrial park it is no longer a permitted use and they would eliminate the use. It doesn't matter who wants to put in an office; they would not be 2 or 3 stores down or offices down from the offender. With regard to the moratorium, she looked at all the other cities that have gone for a year under a moratorium and a lot of them haven't come back with their plans. She commented that she would like to see what the actual ordinances look like for Dania Beach and Coconut Creek and for Delray Beach. She remarked that they don't have those ordinances in front of them to judge. She referred to the definition of prescribe and believed that, not with standing that they shouldn't be regulating doctors with zoning code, but if they are going to refer to whoever is going to be dispensing there has to be a legal definition and it should either a medical doctor, a nurse practitioner, a physicians assistant, but in that respect that it is someone that can distribute those type of prescriptions for those classes of drugs. She then referred to the mentioning of the establishment and although that establishment might be a definition in the code which has quite an exhaustive list of definitions and again, she thought they were coming back to permitted uses and as a zoning Board and the permitted uses to her should be more of a factor than the overwhelming concern there are bad guys in our community and we need to stop more of them from getting here. She remarked that she agreed with Mr. Aronson's perception of zoning.

Mr. Aronson remarked that he disagrees that if they pass this they give BSO any weapons and thought they would give them a gun without any bullets. He commented that if you read the ordinance carefully, not from a law enforcement view, but from a legal and zoning view, the Board didn't help them. He commented that he wants to help them, but this ordinance doesn't help them. In regard to all of these classified drugs are not pain drugs. Many of these classified

drugs are other types of drugs. He expressed his concern about hamstringing legitimate doctors. He recommended that the Board table anything else.

MOTION: TO REQUEST THE COMMISSION TO EXTEND THE MORATORIUM FOR AT LEAST 90 DAYS, WHICH WILL GIVE THE P&Z BOARD AN OPPORTUNITY TO FURTHER LOOK AT THIS ORDINANCE AND TO ALSO SEE WHAT THE STATE LEGISLATURE DOES. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSSION.

Ms. Sori remarked that would give them additional time.

Ms. Lundgren commented that the session usually wraps up in May or June so it could well extend.

Ms. Sori explained that she spoke to one of our State Congressman on another issue and he told her the session was from March until the beginning of May.

Ms. Lundgren asked the Board for anything they could recommend that can be included in this ordinance and move it forward. She recommended the Board move it forward.

Ms. Sori wanted to know how they could do that when the Commission has already put it on their agenda for March 23rd. They put it on so fast they didn't give them time to really digest all of this.

Mr. Aronson remarked that Commission could pass this without their approval.

Ms. Lundgren interjected that there should be vote of a yes or no on the recommendation.

Mr. Roper reminded that Board there was a motion on the floor. He then commented that he thought everyone has given a lot of good points for them to look at. He also thought that this was a very hard package to put together relative terminology, etc. that will make everyone happy. He thought that people were also looking at this from a standpoint that what can they do to help law enforcement also and he didn't know if the Board thinks that this is every thing they could do and maybe there are some other things. Maybe this is something the Commission may want to workshop with the Planning & Zoning Board with law enforcement in and sit down and discuss this to a point that they would feel they have something that is meaningful that more people would be able to approve.

MOTION AMENDED: TO TABLE TO A FUTURE DATE. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSSION.

Mr. Rodriguez commented that he was in favor for an additional moratorium and thought that was what Mr. Aronson's motion was.

Mr. Aronson responded that was what he wanted to do, but was told that they have to act on this ordinance and his action was to table this.

Ms. Sori wanted to know where it was written they have to act on this now.

Mr. Roper suggested that they can table this and then make a separate motion to ask that the Commission consider extending the moratorium with the possibility of having a workshop that would involve both Planning & Zoning and the Commission.

Mr. Konhauzer commented that he personally thinks they are sending the wrong issue and suggested that if they want to table this they should say why they want to table this.

Mr. Roper thought that when the Commission reads the minutes it would be quite apparent.

Mr. Aronson commented that he would re-word the motion and that he didn't like a lot of topics in one motion.

Ms. Lundgren requested that the motion was tabled to a date certain for re-advertisement.

MOTION AMENDED: TO TABLE THIS MOTION TO A DATE THAT IS CO-TERMINUS WITH THE DATE THE COMMISSION EXTENDS THE MORATORIUM. MOTION MADE BY MR. ARONSON FOR DISCUSSION.

Mr. Aronson responded no, and that he believes that this Board wants to table this and ask the Commission to extend the moratorium in order that this Board can further look at this including having a workshop meeting scheduled. If you ask for a date certain he would not know what that date would be. He also commented that he didn't understand the critical nature of a date certain that he would have to pick out of the air. He then commented that he to wants to pass something that was relevant and helpful and didn't think they were trying to be obstructive here.

Mr. Konhauzer wants to know what is relevant that they can't give to the Commission.

Mr. Roper explained that in Mr. Woods's presentation to the Commission he puts in comments and would put in some of the Planning & Zoning concerns and asked Mr. Wood how he does it.

Mr. Wood responded that what he normally does is to put the motion in his Staff Report and refers to the minutes to reflect the comments made by the Board.

Mr. Roper then asked Mr. Wood if the Commission asked him that he would give them a recap from the minutes.

Mr. Wood responded that was correct.

Mr. Roper asked Mr. Wood to give the Commission a recap prior to the time that it goes to Commission.

MOTION AMENDED AGAIN: TO TABLE AND REQUEST THAT THE COMMISSION EXTEND THE MORITORIUM TO A DATE THAT WILL PERMIT THE PLANNING & ZONING BOARD TO FURTHER INVESTIGATE THE SCOPE OF THIS ORDINANCE

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INCLUDING SCHEDULING A WORKSHOP, STAFF PROVIDING THEM WITH SIMILAR ORDINANCES AND OTHER BACKGROUND MATERIAL THAT ENABLE THEM TO MAKE A REASONABLE DECISION. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSION.

Mr. Roper mentioned that they have requested that Mr. Wood to look at the minutes and put down the concerns and give that specifically to the Commission in their backup material in which this item will be on the agenda. They will have this in their backup and will be able to look at it and make a determination.

MOTION: TO TABLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES AND TO REQUEST THAT THE COMMISSION EXTEND THE MORATORIUM TO A DATE THAT WILL PERMIT THE BOARD TO FURTHER INVESTIGATE THE SCOPE OF THIS ORDINANCE INCLUDING SCHEDULING A WORKSHOP; AND BEING PROVIDED WITH SIMILAR ORDINANCES AND OTHER BACKGROUND MATERIAL. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS. On roll call there were five aye votes and four no votes made by Mr. Rodriguez, Mr. Valenti, Mr. Konhauzer, and Mr. Roper. Motion was approved.

4. NEW BUSINESS:

A. DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES

Mr. Wood explained that the City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on “pain management clinics” to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for municipal zoning regulation.

Current City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (PMUD) for which the use is anticipated would be considered appropriate in the Monterra Development which has that zoning designation. Similarly, medical office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted.

The attached proposed Code change would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating co-location of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location
5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in this district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

Mr. Wood concluded that the Planning and Zoning Board is requested to discuss and comment on the proposed Code revision. The Board’s recommendation will be forwarded to the City Commission for action.

MOTION: FOR DISCUSSION MADE BY MR. SANDS AND SECONDED BY MR. KONHAUZER.

Mr. Sands wanted to know if the new code would prevent a medical office from having any type of a pharmacy. He mentioned that he has several children that are in his pre-school who are on Adderall and their doctors have pharmacies in their office. Adderall would be considered a narcotic, but for the parents they have to write a prescription and go somewhere, because that is a narcotic. For ease and convenience a lot of these particular physicians have pharmacies in their

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offices to fill those prescriptions. He thought this was more of a legal issue more than a code enforcement issue and thought that changing the code on this would provide temporary relief, but no permanent solutions. He wanted to know if a medical office or pediatrician's office who wants to do that and would we prevent them from offering that convenience (dispensing narcotic drugs) with this new code.

Mr. Wood responded yes and the limitation would be on the controlled substances or regulated drugs.

Ms. Lundgren referred to page 3, paragraph 1, last page; she explained that it prohibits on-site dispensing of identified controlled substances identified by certain sections of the Florida Statutes. She said Adderall is included as a controlled substance in those Statutory sections. She remarked that she hasn't looked at that specific issue, but believed that it is a restricted controlled substance then that would be the effect of this ordinance.

Mr. Aronson commented that like a dermatologist who customarily has a pharmacy and prescribes various dermatological products would not be restricted.

Mr. Markley remarked that as a point of clarification, the City is not aware of any current medical offices which have a local business tax receipt for a pharmacy. He was not aware of any doctor's offices that were performing that type of function.

Mr. Sands remarked that we are writing code not just for the present, but for the future. The issue is that if someone does decide to come in town such as a Pediatric office, he asked if we were throwing the baby out with the bath water because we have some pain clinics that are abusing this and this is a legal issue and not so much a code enforcement issue. Is this more of a legal enforcement issue, and referred to the Staff Report that started out that they have been made aware of news reports and by the police department. He said that his question is it best solved by them redoing the code or by re-upping what the law enforcement as opposed to code enforcement.

Ms. Sori commented that many physicians give out samples including narcotic samples and what are you going to do about that. Nothing has been addressed to that issue. Many, many physicians give out samples.

Ms. Lundgren again referred to the 3rd page under sub-section (a), there are several exemptions from the prohibition on on-site dispensing and one of those is administering a controlled substance directly to a patient if the amount of the controlled substance is adequate and is not more than necessary to treat the patient during that particular treatment session or there is a one time emergency re-supply exemption.

Ms. Sori remarked that if a doctor has a patient who can't afford something they will give them bulk samples.

Ms. McCoy agreed with Ms. Sori and remarked that she has a doctor in Pembroke Pines who gave her 5 weeks of a controlled substance and she didn't turn it down, because it is expensive. She referred to Stirling Palm Plaza which is basically an office building and medical building there is a pharmacy in that center and do we consider that type of use in that office center and

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would that be prohibited, because it is an office building and would it fall under the permitted accessory uses and pharmacy has been deleted, which is under section 23-84(c) office buildings, item 2.

Mr. Markley responded that Section 23-84 is to particular accessory uses that are someone has a primary use and wanted in addition to that primary use have an accessory use as one of those four items. This would limit the number of accessory, secondary uses to three. Pharmacy would remain a permitted use as a primary use in that zoning district.

Ms. McCoy remarked that she was meeting with the owner's son of that center relative her professional business and she said that he had made a comment to her about Cooper City and about how that pharmacist was being harassed and asked if we have gone after that particular pharmacist.

Mr. Wood responded that he was not able to answer specific enforcement questions tonight.

Mr. Rodriguez wanted to know how many of these pain clinic facilities exist today that they would be regulating and does this code change affect them?

Mr. Wood responded that as far as we know there are none in Cooper City.

Mr. Aronson commented that he agreed with what Mr. Sands said and thought that one of the ways to proceed is as a Board if they are going to lean toward the view that Mr. Sands took, we may not need to discuss all this. He expressed that he felt he needed more insight as to why this is coming up. He thought that it seems a bit of an over reaction to a problem we don't have. It is a problem that may be somewhere in some communities, but not ours.

Ms. Lundgren explained that the issue that has prompted this code change is the proliferation of the so called pain management clinics all over Broward County. This has been coming up in numerous local governments and there have been a lot of very negative activities and effects that are associated with these clinics. Essentially what has been occurring is there are clinics that are licensed to dispense on-site these controlled substances and under Florida law it is very lenient as to the amount that can be distributed and who can be prescribed these drugs. There is no method to screen the patients who come in and claim pain and then receive medication. They can go from doctor to doctor throughout Broward County and rack up huge amounts of drugs and there has been a lot of reports and news accounts of this even extending to folks from out of State like Kentucky and West Virginia who come down and they doctor shop for loads of narcotics and they take them back to their home state and purvey them in the drug market.

Mr. Aronson remarked that he understands the proliferation of these clinics, but wasn't suggesting that most of them were bad, however based on that explanation this seems more of State issue than a municipal issue. He explained that recently his wife went to a pain doctor, but that doctor doesn't dispense any narcotics at all. His wife gets epidurals and goes to a pharmacy for medication. He asked if there was a difference of a doctor at a pain clinic who prescribes a prescription that he fills at his own pharmacy versus giving someone a prescription that he fills at Walgreens or CVS. A doctor having his own pharmacy is not relevant to this issue. They are talking about something very specific that is a perceived problem about pain clinics and they are

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trying to solve it for our 8 square mile City and he didn't think that this is the way that problem gets solved.

Mr. Roper commented that many cities have passed similar legislation already. He asked Ms. Lundgren if she knew who some of those cities are and whether it is very similar in nature as to what they are discussing now.

Ms. Lundgren responded yes, and the first City that has addressed this that was having a huge problem with the pain clinics coming in and as a client of her firm is Dania Beach. They passed an ordinance last year and several other cities quickly followed that and enacted very similar regulations. She mentioned Oakland Park and Coconut Creek who have both passed moratoria and if they haven't yet adopted similar ordinances they have these exact same concepts before their Commission and are in the process of doing so. She mentioned there has also been an effort within Broward County and the County Commission has been in the process of putting this into place. She also mentioned that outside of Broward, West Palm Beach and Palm Beach County, Boca Raton have been in consideration of these regulations as well. It is really a multi-county effort at this point because there has been such a clear identification of these huge issues and the criminal effects that are creating a big problem for the adjacent businesses in the same plazas as these people pick up their drugs and they sit in the parking lot snorting and shooting them up. There are a lot of obvious concerns if you share your shopping plaza with these clinics.

Mr. Sands remarked that snorting and shooting up and doctor shopping are all legal issues and are not code enforcement issues. He commented that Ms. Lundgren mentioned these other cities are considering legislation, but asked how many have actually enacted it and how many of the cities that she referred to are also represented by her law firm. He remarked that she mentioned Dania Beach. He commented that his church is in Dania Beach and compared to Cooper City it is night and day. It is a different world. He didn't even know that was a fair comparison. He said that it seems like it is a big issue, but it is not here and there is no idea what is going to happen and no idea how to react to it and are trying to write some preventative thing, but didn't know if they entirely understood what is going on with this. He again remarked that he personally didn't see this as a code enforcement issue and sees it as a law enforcement issue.

Ms. Lundgren responded that they do represent Dania Beach and Hallandale Beach on a special counsel basis and they have already enacted a moratorium and are in a process of adopting the ordinance. She said that they also represent Weston who has adopted this and Weston certainly wasn't the kind of place where you would expect to pop up either, but they wanted to take a proactive stance knowing that as more and more cities

Mr. Konhauzer interjected that he has looked at the corridors in Dania Beach off of Griffin Road and has seen many of them. They are areas like the 441 corridor that are of a lower level. He remarked that he doesn't see it here and agrees it is a problem, but commented that we have laws that protect us. He then commented that there are other ways of controlling it through the places that are distributing it by following through on that and going with the law rather than making more laws here and didn't know if that was necessary.

Ms. McCoy commented that in the past when they have looked at making changes to the zoning regulations they have also had other municipalities' codes as a guide. She mentioned Pembroke Pines, Boca Raton, Coral Springs, even Plantation and Sunrise that are considered comparable

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cities. She then commented that looking at the light industrial district and to exclude that use from the light industrial district might not be a bad idea. This says that for the wholesale and warehousing they have to have a minimum of 1,750 square and is that what is being proposed and that they are in there as long as they are doing the wholesale and warehousing and is that correct. She referred to section 23-56, light industrial.

Mr. Markley responded that the square footage is not being proposed to have any change and is existing language. The proposed change in the light industrial is the part that is underlined and is in color.

Ms. McCoy remarked that a pharmacy would not be allowed in the light industrial district.

Mr. Markley responded that it is currently as an accessory use. Again, he commented that an accessory being ancillary to another primary use.

Ms. McCoy interjected how you would make a pharmacy an ancillary to a primary use. What would be the primary use in an industrial park?

Mr. Markley remarked that as an example might be with a hospital and the primary use is the health care that they are providing but they have a pharmacy that is ancillary.

Ms. McCoy commented that we are not talking about a hospital we are talking about the light industrial specifically and Mr. Markley is saying that it is an accessory use.

Mr. Markley remarked that it would currently be permitted as an accessory use, but the proposed is that it would no longer be permitted as an accessory use as well as the additional regulation that whereas it could still be a wholesale or warehouse, but there would regulation on the controlled substances being distributed so that someone would not be going directly to that location and being dispensed on an individual basis for the controlled substances.

Ms. McCoy asked how the rest of the Board would feel about addressing just the light industrial where they know they have a loop hole.

Mr. Aronson commented as they sit here they are not comfortable with this ordinance. He then remarked that normally when we are discussing a proposed modification to an ordinance they have some discussion about it in advance of seeing the actual proposed ordinance and they get some insight as to why and how and what they want to do. This one just popped up and it seems like it became a critical issue that they need to get passed. He was not ready to pass it unless Staff was to tell him that failure to pass it now will create a problem that they can't rectify if they pass it later.

Mr. Roper thought the Commission was trying to be pro-active and it was the Commission that wanted to bring this before the Planning & Zoning Board. He remarked that if there are enough Board members that feel like they need additional information to be able to vote on this issue, he suggested they consider tabling this until they do have more information such as from the other cities that have passed something similar or are in the process of passing or have passed something similar and then they can readdress this issue.

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Mr. Rodriguez commented that he is comfortable with this ordinance and remarked that you have other cities that are making moves and what is going to happen is that the people that are doing this are going to come to the city that doesn't have something in place. He explained that he was all for this ordinance and didn't care if there was nothing happening now, if we are going to prevent something he was okay. He agreed that it was a law enforcement issue, but so is liquor stores and strip bars and everything else and that is why there are ordinances because you want them out of a certain area and that is what he wants here. He commented that we are susceptible too... the high school, drugs, they are all over the place and people are going to converge here if they don't do something and he thinks they should do something. He asked if someone could give him a good reason for the down side of the ordinance and he sees the pros and doesn't see the cons.

Mr. Aronson commented that the down side is there may be some very ethical doctors who choose to have a pain clinic or any kind of medical practice where they want to have a pharmacy and were would be preventing them for that and they may want to do it for valid medical or business reasons and we have said no.

Mr. Rodriguez responded that we can overcome that and we don't have that now. If that is what they want to do in their own office he thought there was something that could be done to address that.

Mr. Aronson thought that most of the Board would like to take a better look at this issue.

Mr. Roper explained that he would like the Board to readdress this issue rather than seeing it die and feels that this issue is very important.

Ms. McCoy commented that when it comes back to the Board, she would want to see other cities ordinances and that is how they have been able to evaluate issues in the past.

Ms. Lundgren responded that she understands that and if the direction of the Board would be to table it, then she would put together a more comprehensive packet with other cities ordinances and more of a broad account of what this issue really entails so that they will be fully prepared for the next discussion. She then reiterated that this issue may not have been on the radar, but this has been coming up more and more in cities that they represent and with cities she has been tracking outside of the cities they deal with regularly, like Oakland Park and Plantation, who are represented by another firm who have been working on this issue and consulting across the county to other attorneys and planners about how to get a grip on this issue. It has been something she feels that need to be proactively addressed. She said that she wants to make sure that the City is proactively protected in that situation.

MOTION: TO TABLE UNTIL THE NEXT P&Z BOARD MEETING WITH THE CAVEAT THAT WE HAVE THE NECESSARY INFORMATION. MOTION MADE BY MR. SANDS AND SECONDED BY MS. MCCOY.

Ms. Sori thought that physicians giving out bulk samples should be also considered.

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Mr. Roper thought they should leave it up to the attorney and her office to bring back to the Board what they are asking for.

Ms. Lundgren commented that she will work with Staff to put a packet together for the next meeting.

Mr. Aronson mentioned that the State Legislature meets in a few weeks and asked Ms. Lundgren to let them know if this issue was on their agenda also.

Ms. Lundgren responded that there was a bill passed last year that requires monitoring of pharmacies with regard to the prescription of these substances and the dispensing of these substances however, that bill was an unfunded mandate because the Department of Health does not have the funds to implement this technological program and it is clear there is very little immediate effect from this 2009 Legislation and even though there was legislation passed this problem is still going full blast.

Mr. Aronson commented that it seems odd to have a zoning law to regulate a legal or criminal activity.

MOTION: TO TABLE POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES UNTIL THE NEXT P&Z BOARD MEETING WITH THE CAVEAT THAT THE BOARD HAS THE NECESSARY INFORMATION REQUESTED. MOTION MADE BY MR. SANDS AND SECONDED BY MS. MCCOY. There were all eyes on roll call vote. Motion was approved.

Land Development Regulations Adopted By Local Governments

ORDINANCE NO. 2009-009

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, AMENDING ITS LAND DEVELOPMENT REGULATIONS TO PROHIBIT ON-SITE DISPENSING OF CONTROLLED SUBSTANCES BY PAIN MANAGEMENT CLINICS, TO THE EXTENT PERMITTED BY LAW; PROVIDING DEFINITIONS; PROVIDING SUPPLEMENTAL REGULATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; FURTHER, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Dania Beach (the "City") finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the Miami Herald, Sun Sentinel and other news media, such as the Lexington Herald Leader, have published numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled

substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at pain management clinics, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, the City Commission approved a Resolution on April 27, 2009 notifying the public that changes to its zoning code regarding medical offices that offer on-site dispensing of narcotic drugs was under review; and

WHEREAS, during an advertised public hearing on June 17, 2009, the Planning and Zoning Board, sitting as the City's Local Planning Agency, reviewed this Ordinance and recommended approval to the City Commission; and

WHEREAS, following proper notice to the public and after having received input and participation by interested members of the public and staff, and having considered the recommendation of the Planning and Zoning Board, the City Commission finds this Ordinance consistent with its Comprehensive Plan, as well as Florida and federal law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA:

Section 1. That the preceding "Whereas" clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

Section 2. That the City Commission amends Article 2, Section 2.10, entitled

"Definitions" of its Land Development Regulations to alter or create the following definitions:

Adult residential care facility. Any housing facility for one hundred (100) or more elderly residents situated on property which has direct access to and is adjacent to either a minor arterial containing at least one hundred ten (110) feet of right-of-way or a principal arterial as designated on Broward County Trafficways Plan, which facility contains units with no more than one sleeping room regardless of the number of accessory rooms including living rooms and bathrooms; and contains a central dining facility which serves at least one full meal per day; and provides central housekeeping services to its residents no less than weekly; and employs a full-time registered nurse on call to the residents; and provides planned activities, which activities may include, but are not limited to, social, educational and recreational activities; and may provide on-site dispensing of drugs under the supervision and control of a licensed physician as an accessory use.

Drug store shall mean a retail pharmacy, with or without a drive lane, unless otherwise specified in this Code.

Office, medical shall mean a facility providing services to the public by physicians, dentists, surgeons, chiropractors, pharmacists, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, or others who are duly licensed to practice their respective professions in the State of Florida, as well as others, including but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner. Retail pharmacies staffed by pharmacists that sell prescription drugs, nonprescription drugs or both and other retail goods for sale to the public, are not medical offices. Offices for social workers and mental health counselors are not medical offices. Pain management clinics, as defined in this provision, are medical offices.

Pharmacy, retail shall mean a retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc.

Pain management clinic shall mean a type of medical office providing a variety of personal services by an on-site physician who is currently licensed by either the Florida Board of Medicine or Board of Osteopathic Medicine and his or her staff, which, individually or collectively, are intended to reduce or manage pain.

Substance abuse and rehabilitation centers shall mean a type of medical office established to aid persons affected by excessive or illegal use of drugs, narcotics or other hallucinatory substances, not including alcohol, who have developed a dependency on such substances, including but not limited to methadone maintenance facilities, and outpatient rehabilitation facilities.

Section 3. Article 6, entitled “*Supplementary Use Regulations*,” is amended to create Section 6.66, entitled “*Pain Management Clinics*,” to read as follows:

Sec. 6.66. Pain Management Clinics.

(a) Applicability. Pain management clinics shall be subject to the following supplemental regulations:

(1) On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes, unless otherwise expressly permitted by statutory or general law, is prohibited.

(2) Any parking demand created by a pain management clinic shall not exceed the supply of parking spaces legally available within the shared guest or visitor parking areas allocated on the site as required by Section 6.20 of this Code. An applicant may be required to demonstrate that on-site traffic flow and parking will be sufficient to accommodate parking demands generated by the pain management clinic based on a current traffic and parking study prepared by a certified professional, if requested by the City.

(b) Nonconforming Uses. Any application for a Certificate of Use for a business operating as a pain management clinic prior to April 28, 2009 shall be subject to zoning regulations in effect prior to the effective date of this Ordinance. Any such clinic legally in existence prior to the effective date of this Ordinance, but now in violation of its provisions, shall be considered a legal nonconforming use.

(c) Enforcement. Enforcement of these supplemental regulations shall be as provided by law.

Section 4. Section 10.15, entitled “*Zoning Relief Procedures*” is created to read as follows:

Section 10.15. Zoning relief procedures. In order to address possible unintended violations of federal and state laws, subsequent to implementation of this Code or its related rules, policies, and procedures in advance of costly litigation, zoning relief may be granted pursuant to this section.

(1) Application. A person or entity shall request relief under this Section prior to filing a lawsuit, by completing a Zoning Relief Request form, which is available from the City's Community Development Division ("CDD"). The form shall contain such questions and requests for information as are necessary for evaluating the relief requested.

(2) Notice. The City shall display a notice in the City's public notice bulletin board and shall maintain copies available for review in the Community Development Division and the City Clerk's Office. The notice shall advise the public that a request for zoning relief under a federal or state law is pending. The location, date and time of the applicable public hearing shall be included in the notice. Notice shall also be provided to property owners within 300 feet, if the request for relief is site specific.

(3) Hearing and determination. The City Commission shall have the authority to consider and act on requests for zoning relief submitted to the Community Development Division. A public hearing shall be held within seventy five (75) days of receipt by the City of the request for relief at a regular or special City Commission meeting. During the public hearing, the City Commission shall solicit comment and information from the public and shall decide whether to grant the requested relief. A written determination shall be issued by resolution no later than seven (7) days after the conclusion of the public hearing. The determination may: (a) grant the relief requested, (b) grant a portion of the request and deny a portion of the request, or impose conditions upon the grant of the request, or (c) deny the request. Any determination denying the requested relief shall be final, in writing, and shall state the reasons the relief was denied. The final written determination shall be sent to the requesting party by certified mail, return receipt requested.

(4) Additional information. If necessary, prior to the public hearing, the City may request additional information from the requesting party, specifying in sufficient detail what information is required. In the event a request for additional information is made to the requesting party by the City, the seventy-five (75) day time period to schedule a public hearing shall be extended to ninety (90) days to include the time necessary to seek and review the additional information. The requesting party shall have fifteen (15) days after the date the information is requested to provide the needed information. If the requesting party fails to timely respond with the requested additional information, the City shall notify the requesting party and proceed with scheduling a public hearing and issuing its final written determination regarding the relief requested as required in (3).

(5) Criteria. In determining whether the zoning relief request shall be granted or denied, the applicant shall be required to establish:

(a) The applicant is a potential claimant under a federal or state law; and

(b) The applicant believes in good faith that the City through implementation of its zoning code has intentionally or unintentionally violated federal or state law for the reasons stated in the Zoning Relief Request. The law(s) the City has allegedly violated shall be identified.

(6) Exhaustion required. Completion of the zoning relief procedures shall be a supplement to and not a substitute for any other pre-litigation dispute resolution processes available by law to the City or the applicant. Completion of the zoning relief procedures shall evidence the exhaustion of all administrative remedies available from the City.

(7) Fees. A fee as deemed appropriate by the City Commission shall be imposed as provided by the City Commission by resolution. The fee is intended to defray administrative costs incurred to review the request, including advertising costs. The City shall have no obligation to pay a requesting party's attorney fees or costs in connection with the request for zoning relief.

(8) Effect while pending. While an application for zoning relief or appeal of a determination of same is pending before the City, the City will not enforce the subject zoning ordinance, rules, policies, and procedures against the property owner, except the City may seek injunctive relief if an imminent threat to the health, safety and welfare of the public is present.

Section 5. Section 6.16(b)(7) containing standards for home occupations shall be amended to read as follows:

(b) Standards: A home occupation is allowable as an accessory use in a bona fide dwelling unit in any residential area. All provisions of this Code pertaining to residential uses shall be met. In addition, all of the following standards shall apply:

(7) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in other than a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. There shall be no storage of narcotic drugs, or hazardous or toxic materials for use in the home occupation. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuation in line voltage [to] the premises.

Section 6. Section 6.16(d) shall be amended to read as follows:

(d) Home offices, excluding ~~medical, counseling, and dental offices~~ and counseling services, are permitted, provided that no transactions or meetings are made in person on the premises.

Section 7. Section 16.20 containing permitted uses in the Industrial-Research-Office (IRO) District shall be amended to read as follows:

16.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one or more of the following specified uses:

(d) Office uses, excluding medical offices.

Section 8. Section 16.30 containing prohibited uses in the Industrial-Research-Office

(IRO) District shall be amended to read as follows:

16.30. Prohibited uses.

The permitted enumerated uses in section 16.20 above shall not be construed to include any of the following, which are indicated for emphasis and clarification:

(w) Medical offices, pharmacies (retail and compounding)

Section 9. Section 18.20 containing permitted uses in the Industrial-Research-Office-

Marine (IROM) District shall be amended to read as follows:

18.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one (1) or more of the following specified uses:

(d) Offices (excluding medical offices), banks, and savings and loans.

Section 10. Section 18.30 containing prohibited uses in the Industrial-Research-

Office-Marine (IROM) District shall be amended to read as follows:

18.30. Prohibited uses.

The permitted enumerated uses in section 18.20 above shall not be construed to include any of the following prohibited uses, which are indicated for emphasis and clarification:

(gg) Medical offices.

Section 11. Section 19.20 containing permitted uses in the Residential Office (RO)

District shall be amended to read as follows:

19.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one (1) or more of the following specified uses:

- (a) General office, excluding medical ~~or dental~~ offices.
- (b) Single-family dwelling units.
- (c) Any use that is accessory or customarily incidental to and located upon the same lot occupied by the main use.

Section 12. Section 21.18, containing a table of uses permitted, prohibited, special condition and special exception uses in the Downtown Transit-Oriented Development (TOD) District, East Dania Beach Boulevard Transit Oriented Corridor (TOC-1) District, and the South Federal Highway Transit Oriented Corridor (TOC-2) District, shall be amended to read as follows:

21.18. Use table.

Table F-1 below shows the list of permitted, prohibited, special condition and special exception uses in each of the three (3) zoning districts.

Y	=	Permitted Use	N	=	Prohibited Use
SC	=	Special Condition Use	SE	=	Special Exception Use

Table F-1. Table of Permitted, Prohibited, Special Condition and Special Exception Uses

Use	Zoning District		
	TOD District	TOC-1 District	TOC-2 District
Medical offices, including dental, chiropractic, osteopathic, acupuncture, physical therapy, optometry, podiatry, and psychology, <u>excluding pain management clinics</u>	Y	Y	Y
Retail sales within an enclosed building, including grocery stores, drug store (no drive-through), caterers, wine shops, appliances, carpet and floor coverings, home furnishings, office supplies, sporting goods, electronics, photographic equipment, jewelry, art, crafts, apparel, hardware, paint, wallpaper, floor coverings, lighting, florist shop, <u>pharmacy,</u> and antique stores	Y	Y	Y

Section 13. Section 27.40 containing prohibited uses in the Industrial-General (IG)

District shall be amended to read as follows:

27.40. Prohibited uses.

The permitted uses enumerated above shall not be construed to include any of the following prohibited uses, which are indicated for emphasis and clarification:

(w) Medical offices.

Section 14. That all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 15. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 16. That this Ordinance shall be effective on adoption on second reading.

PASSED on first reading on June 23, 2009.

PASSED AND ADOPTED on second reading on July 28, 2009.

ANNE CASTRO
MAYOR-COMMISSIONER

ATTEST:

LOUISE STILSON, CMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY

ORDINANCE NO. 50-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION (LLLL), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 21, 2009 and voted 7 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended to read as follows:

BUSINESS OFFICE Any commercial activity conducted primarily in an office, which does not involve the sale of commodities or goods on the premises. This definition does not include a Medical Office.

MEDICAL OFFICE shall mean a facility providing services to the public by physicians, dentists, surgeons, chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, (who are also know as health care practitioners) or others who are duly licensed to practice their respective professions in the State of Florida, as well as others, including but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner.

PHARMACY shall mean a retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc.

PROFESSIONAL OFFICES includes those vocations in which professed attainments in special knowledge are practiced, as distinguished from mere skills, and shall be limited to those professions so classified by the Laws of Florida, and which are conducted as professions and not as a trade or other business. PROFESSIONAL OFFICES do not include offices for the treatment of animals on the premises. This definition does not include a Medical Office.

Section 3. That Section 4.3.3, "Special Requirements for Specific Uses", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended by enacting Subsection 4.3.3 (LLLL), "Medical Offices", to read as follows:

(LLLL) Medical Offices:

(1) Applicability. Medical Offices shall be subject to the following:

(a) On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes, is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

(i) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(ii) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

(iii) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(iv) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

(v) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(2) Appeal. An appeal from an administrative determination or board action, excluding the granting or denial of a variance, regarding Medical Offices shall be appealed to the City Commission. The applicant shall follow the procedures and requirements set forth in Section 2.4.7(E). In addition to the requirements listed in Section 2.4.7(E) the applicant shall also list the following:

(a) If the applicant is a potential claimant under a federal or state law; and

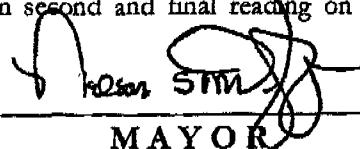
(b) That the applicant believes in good faith that the City through implementation of this section has intentionally or unintentionally violated federal or state law. The law(s) the City has allegedly violated shall be identified.

Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.


Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

20th PASSED AND ADOPTED in regular session on second and final reading on this the day of October, 2009.


MAYOR

ATTEST


City Clerk

First Reading 10/6/09
Second Reading 10/20/09



MEMORANDUM

TO: Mayor and City Commissioners

FROM: David T. Harden, City Manager

DATE: October 13, 2009

SUBJECT: AGENDA ITEM 10.E. - REGULAR COMMISSION MEETING OF OCTOBER 20, 2009
ORDINANCE NO. 50-09 (SECOND READING/SECOND PUBLIC HEARING)

ITEM BEFORE COMMISSION

This ordinance is before Commission for second reading and second public hearing to consider a city initiated amendment to the Land Development Regulations (LDR) Section 4.3.3, "Special Requirements for Specific Uses", by enacting Subsection (LLLL), "Medical Offices", to provide clarification regarding dispensing of narcotic drugs, and amending Appendix "A", to provide for definitions related to the regulation of medical offices.

BACKGROUND

At the first reading on October 6, 2009, the Commission passed Ordinance No. 50-09.

RECOMMENDATION

Recommend approval of Ordinance No. 50-09 on second and final reading.

ORDINANCE NO. 50-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION (LLLL), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 21, 2009 and voted 7 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended to read as follows:

BUSINESS OFFICE Any commercial activity conducted primarily in an office, which does not involve the sale of commodities or goods on the premises. This definition does not include a Medical Office.

MEDICAL OFFICE shall mean a facility providing services to the public by physicians, dentists, surgeons, chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, (who are also know as health care practitioners) or others who are duly licensed to practice their respective professions in the State of Florida, as well as others, including but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner.

PHARMACY shall mean a retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc.

PROFESSIONAL OFFICES includes those vocations in which professed attainments in special knowledge are practiced, as distinguished from mere skills, and shall be limited to those professions so classified by the Laws of Florida, and which are conducted as professions and not as a trade or other business. PROFESSIONAL OFFICES do not include offices for the treatment of animals on the premises. This definition does not include a Medical Office.

Section 3. That Section 4.3.3, "Special Requirements for Specific Uses", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended by enacting Subsection 4.3.3 (LLLL), "Medical Offices", to read as follows:

(LLLL) Medical Offices:

(1) Applicability. Medical Offices shall be subject to the following:

(a) On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes, is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

(i) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(ii) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

(iii) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(iv) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

(v) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(2) Appeal. An appeal from an administrative determination or board action, excluding the granting or denial of a variance, regarding Medical Offices shall be appealed to the City Commission. The applicant shall follow the procedures and requirements set forth in Section 2.4.7(E). In addition to the requirements listed in Section 2.4.7(E) the applicant shall also list the following:

(a) If the applicant is a potential claimant under a federal or state law; and

(b) That the applicant believes in good faith that the City through implementation of this section has intentionally or unintentionally violated federal or state law. The law(s) the City has allegedly violated shall be identified.

Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2009.

ATTEST

MAYOR

City Clerk

First Reading _____

Second Reading _____



MEMORANDUM

TO: Mayor and City Commissioners

FROM: Mark McDonnell, AICP, Asst. Director Planning and Zoning
Paul Dorling, AICP, Director Planning and Zoning

THROUGH: City Manager

DATE: October 1, 2009

SUBJECT: AGENDA ITEM 10.C. - REGULAR COMMISSION MEETING OF OCTOBER 6, 2009
ORDINANCE NO. 50-09 (FIRST READING/FIRST PUBLIC HEARING)

ITEM BEFORE COMMISSION

Consideration of a city-initiated amendment to the Land Development Regulations (LDRs) that will provide a new definition for "Medical Offices" and that includes Special Requirements that regulate medical offices dispensing controlled substances.

BACKGROUND

Medical Office uses are allowed in various zoning districts within the City, including General Commercial, Central Business District, Planned Office Center, Professional and Office District, Planned Commercial Center, and the Mixed Residential Office and Commercial District. Normal operations and expectations of medical office uses include examinations by doctors and, should prescriptions be required, they would be filled off-site at a local pharmacy. Recently, "pain management clinics" have been established which provide not only the prescriptions, but also fill the prescriptions on-site.

Following are highlights of the proposed ordinance:

1. The ordinance introduces a new definition for Medical Office, which includes services normally associated with medical offices (examinations and prescribing of medicines).
2. Clarifies that the existing definitions of Professional Offices and Business Office do not include Medical Offices.
3. Special Requirements are added for Medical Offices that prohibit on-site dispensing of controlled substances identified in Schedule II, III or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes except as follows:
 - A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
 - A pharmacist or health care practitioner when administering a controlled substance to a patient or

resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

- A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.
- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

4. A relief option (appeal process).

REVIEW BY OTHERS

The text amendment was considered by the Planning and Zoning Board on September 21, 2009. The Board unanimously recommended approval on a 7 to 0 vote, by adopting the findings of fact and law contained in the staff report and finding that the amendment is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations. They conditioned their recommendation to require that the definition of "dispensing" be clarified. This has been achieved through an expanded exceptions area as noted above.

The Downtown Development Authority (DDA) reviewed the ordinance at their meeting on September 21, 2009 and recommended approval with the following conditions:

- That the City seeks the opinion of the Attorney General of the legality of this ordinance.
- That the City contacts the legislative delegation and recommends state-wide legislation.
- That the City explores the possibility to make this a nuisance activity (or some other prohibition) so that it is strengthened and not merely a matter of zoning.

The Community Redevelopment Agency (CRA) reviewed the ordinance at their meeting on September 24, 2009 and did not support the amendment. They questioned the legality of regulating trade in this way and the basis for doing the amendment (i.e. newspaper articles, etc.).

The Pineapple Grove Main Street committee will review the ordinance at their meeting on October 7, 2009 and the West Atlantic Redevelopment Coalition will review the ordinance at their meeting on October 14, 2009. The recommendations of those Boards will be presented at second reading.

RECOMMENDATION

By motion, approve Ordinance No. 50-09 on first reading for a city-initiated amendment to the Land Development Regulations, by adopting the findings of fact and law contained in the staff report and finding that the amendment is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

20 THE PALM BEACH POST THURSDAY, OCTOBER 15, 2009

NO. 4731652R

CITY OF DELRAY BEACH NOTICE OF PROPOSED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS

The City Commission of the City of Delray Beach, Florida, desires to refer the following ordinance:

ORDINANCE NO. 41-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH BY AMENDING SECTION 41-11 (1) SUPPLEMENTAL DISTRICT REGULATIONS, SUBSECTION (1) FOUR CORNERS OVERLAY DISTRICT, SUBSUBSECTION (E) STANDARDS LINKAGE TO THE FOUR CORNERS OVERLAY DISTRICT TO PROVIDE THAT CERTAIN AREAS ARE ELIGIBLE TO BE COUNTED TOWARD THE OPEN SPACE CREDIT, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

ORDINANCE NO. 40-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH BY AMENDING SECTION 41-11 (1) SPECIAL REQUIREMENTS FOR SPECIFIC USES, BY ENACTING SUBSECTION (1) MEDICAL OFFICES, TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS, AMENDING APPENDIX A TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

ORDINANCE NO. 31-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING SECTION 42-72, SIGNS, SUBSECTION 42-72(1)(B) SIGNAGE SHIP SIGNS, IN ORDER TO PROVIDE STANDARDS FOR SAME, PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

The City Commission will conduct a (2) Public Hearing for the purpose of accepting public testimony regarding the proposed ordinance at the Public Hearing will be held on **TUESDAY, OCTOBER 16, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida. If the proposed ordinance is passed, it will be a second public hearing will be held on **TUESDAY, OCTOBER 20, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida.

All interested persons are invited to attend the public hearing and to give testimony. The public hearing will be held in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida. The public hearing will be held on **TUESDAY, OCTOBER 16, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida. The public hearing will be held on **TUESDAY, OCTOBER 20, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida.

It is advised that no person shall be entitled to a hearing on any ordinance unless the person has given notice of his or her intention to appear at the public hearing. The public hearing will be held on **TUESDAY, OCTOBER 16, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida. The public hearing will be held on **TUESDAY, OCTOBER 20, 2009 AT 7:00 P.M.** in the Commission Chamber of City Hall, 100 N.W. 15th Avenue, Delray Beach, Florida.

CITY OF DELRAY BEACH
CITY COMMISSION
CITY HALL

PUB: The Palm Beach Post
September 29 & October 15, 2009

PLANNING AND ZONING BOARD STAFF REPORT

MEETING DATE: SEPTEMBER 21, 2009

AGENDA NO: IV.C.

AGENDA ITEM: CONSIDERATION OF A CITY-INITIATED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS (LDR), BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION (LLLL), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES.

ITEM BEFORE THE BOARD

The item before the Board is to make a recommendation to the City Commission regarding a city-initiated amendment to Land Development Regulations (LDRs) that provides a new definition for "Medical Offices" and includes Special Requirements that prohibits medical offices from dispensing controlled substances.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

BACKGROUND/ANALYSIS

The City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities. There has also been an increase in local advertising for pain management clinics, including references to drugs sold on-site in alternative weekly newspapers, and also on fliers left at bus benches and on billboards. Also, several South Florida pain management clinics have been associated with a "pipeline" of drug trafficking that has led to illegal drug use in other states, such as Kentucky, West Virginia and Ohio, according to recent newspaper articles. If located within the City, these types of uses would currently fall under Medical Office use.

Medical Office uses are allowed in various zoning districts within the City, including General Commercial, Central Business District, Planned Office Center, Professional and Office District, Planned Commercial Center, and the Mixed Residential Office and Commercial District. Normal operations and expectations of this medical office use include examinations by doctors and, should prescriptions be required, they would be written and filled off-site at a local pharmacy. The "pain management clinics" provide not only the prescription, but also fill the prescription on-site.

Following are highlights of the proposed ordinance:

- The ordinance introduces a new definition for Medical Office, which includes services normally associated with medical offices (examinations and prescribing of medicines) and will prohibit dispensing of specific medicines at the office.
- Clarifies that the existing definitions of Professional Offices and Business Office do not include Medical Offices.

Planning and Zoning Board Meeting, September 21, 2009
LDR Amendment – Pain Management Clinics

- Special Requirements are added for Medical Offices that prohibit on-site dispensing of controlled substances identified in Schedule II, III or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes.
- A relief option (appeal process) is added in the proposed ordinance.

REQUIRED FINDINGS

Comprehensive Plan Conformance

LDR Section 2.4.5(M)(5) (Findings) requires that the City Commission make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan. A thorough review of the Comprehensive Plan was conducted and the following applicable objective and policy are identified:

Future Land Use Element Objective A-2

Reduce, and eventually eliminate, uses which are inconsistent with predominant adjacent land uses, and to insure compatibility of future development.

Policy A-2.3 Development of remaining vacant properties shall occur in a manner which is consistent with and complementary to adjacent development regardless of zoning designations. This policy shall be implemented through the review process associated with platting and site plans.

REVIEW BY OTHERS

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

- Neighborhood Advisory Council

The following advisory boards will review the proposed amendment and their recommendations will be forwarded to the Planning and Zoning Board and/or City Commission, as follows:

The Downtown Development Authority will review the ordinance at their meeting on September 21, 2009.

The Community Redevelopment Area will review the ordinance at their meeting on September 24, 2009.

The Pineapple Grove Main Street committee will review the ordinance at their meeting on October 7, 2009.

The West Atlantic Redevelopment Coalition will review the ordinance at their meeting on October 14, 2009.

ALTERNATIVE ACTIONS

- A. Continue with direction.
- B. Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A" to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M)
- C. Move a recommendation of denial to the City Commission of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A" to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is inconsistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Section 2.4.5(M) (*motion to be made in the affirmative*).

RECOMMENDED ACTION

Recommend approval of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A" to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

Attachment: Proposed ordinance

ORDINANCE NO. 2009-____

AN ORDINANCE OF THE CITY OF WESTON, FLORIDA, AMENDING CHAPTER 12 "DEFINITIONS" TO CREATE A DEFINITION OF "PAIN MANAGEMENT CLINIC;" CREATING SECTION 158.59.1 "PAIN MANAGEMENT CLINICS," TO PROHIBIT ON-SITE DISPENSING OF CONTROLLED SUBSTANCES BY PAIN MANAGEMENT CLINICS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, First, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, Second, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, Third, in the absence of state regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, Fourth, as such, the City Commission finds it necessary to prohibit a pain management clinic from dispensing onsite controlled substances; and

WHEREAS, Fifth, the City Commission, in its capacity as the Local Planning Agency, has reviewed the Ordinance and recommends approval; and

WHEREAS, Sixth, the City Commission finds that this Ordinance is in the best interest and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Weston, Florida:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent and factual findings underlying this Ordinance.

Section 2. Recommendation of Approval by the Local Planning Agency.

The City Commission, in its capacity as the Local Planning Agency, has reviewed the proposed Ordinance and recommends approval.

Section 3. Amendment to Chapter 12.

Chapter 12, "Definitions," of the Code of Ordinances of the City of Weston, is amended to read as follows:

§ 12.01 DEFINITIONS.

(A) **General rule.** Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, shaded text reflects changes made from First Reading.

1
2 (B) **Definitions.** For the purpose of this code, the following definitions shall apply unless the
3 context clearly indicates or requires a different meaning.

4
5 * * *

6
7 **PAIN MANAGEMENT CLINIC.** A type of medical office providing a variety of personal services by an
8 on-site physician who is currently licensed by either the Florida Board of Medicine or Board of
9 Osteopathic Medicine and his or her staff, which, individually or collectively, are intended to reduce or
10 manage pain.

11
12 * * *

13
14 **Section 4. Amendment to Chapter 158.**

15
16 Chapter 158, "Zoning," of the Code of Ordinances of the City of Weston, is amended to read as
17 follows:

18
19 **§ 158.59.1 PAIN MANAGEMENT CLINICS.**

20
21 Pain Management Clinics are prohibited from on-site dispensing of controlled substances that are
22 identified in Schedules II, III, or IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes, unless
23 otherwise expressly permitted by law.

24
25 **Section 5. Codification.**

26
27 It is the intention of the City Commission that the provisions of this Ordinance become and be
28 made part of the City Code, and that the Sections of this Ordinance and Code may be renumbered or
29 relettered and the word "ordinance" may be changed to "section" or such other appropriate word or
30 phrase to accomplish such intentions.

31
32 **Section 6. Severability.**

33
34 Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be
35 declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of
36 this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

37
38 **Section 7. Conflict.**

39
40 That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of
41 Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed
42 to the extent of such conflict.
43

Coding: underlined words are additions to existing text, ~~struck-through~~ words are deletions from existing text, shaded text reflects changes made from First Reading.

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Section 8. Effective Date.

This Ordinance shall be effective upon passage and adoption.

PASSED ON FIRST READING November 16, 2009.

PASSED AND ADOPTED ON SECOND READING _____, 2009.

CITY COMMISSION
CITY OF WESTON, FLORIDA

By _____
Eric M. Hersh, Mayor

ATTEST:

Patricia A. Bates, City Clerk

Approved as to form and legality
for the use of and reliance by the
City of Weston only:

Roll Call:
Commissioner Stermer _____
Commissioner Henriksson _____
Commissioner Chermak _____
Commissioner Gomez _____
Mayor Hersh _____

Jamie Alan Cole, City Attorney

Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, shaded text reflects changes made from First Reading.

Meeting Date: March 9, 2010

Agenda Item

12

Memorandum 10-048

REQUESTED COMMISSION ACTION:

Consent X Ordinance Resolution Consideration/ Discussion Presentation

SHORT TITLE

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY CREATING A NEW SECTION 155.063, "DISPENSING CONTROLLED SUBSTANCES" TO PROVIDE FOR REGULATIONS RELATING TO THE DISPENSING OF CONTROLLED SUBSTANCES; AND BY CREATING A NEW SECTION 155.029, "REASONABLE ACCOMMODATION," TO PROVIDE PROCEDURES FOR THE ACCOMMODATION OF PERSONS WITH DISABILITIES.

Summary of Purpose and Why:

The proposed ordinance regulates the establishment of pain clinics by prohibiting in medical offices, business offices or professional offices within every zoning districts the on site "dispensing of controlled substances," which are identified in Schedule II, III or IV in Section 893.03, 893.035 or 893.036 Florida Statutes. Certain exemptions are allowed, which generally pertain to health care practitioner administering controlled substances. The ordinance also establishes a section on reasonable accommodations for "disabled individuals."

- (1) Origin of request for this action: City Commission
(2) Primary staff contact: Robin M. Bird, Development Services Director Ext. 4634
(3) Expiration of contract, if applicable:
(4) Fiscal impact and source of funding: None

Table with 4 columns: DEPARTMENTAL COORDINATION, DATE, DEPARTMENTAL RECOMMENDATION, DEPARTMENTAL HEAD SIGNATURE. Includes entries for City Attorney and Planning & Zoning.

X City Manager

Handwritten signature of the City Manager.

ACTION TAKEN BY COMMISSION:

Table with 4 columns: Ordinance/Workshop, Resolution, Consideration, Results. Includes rows for 1st and 2nd Reading.

ORDINANCE NO. 2010-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY CREATING A NEW SECTION 155.063, "DISPENSING CONTROLLED SUBSTANCES," TO PROVIDE FOR REGULATIONS RELATING TO THE DISPENSING OF CONTROLLED SUBSTANCES; AND BY CREATING A NEW SECTION 155.029, "REASONABLE ACCOMMODATION," TO PROVIDE PROCEDURES FOR THE ACCOMMODATION OF PERSONS WITH DISABILITIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medial offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Pompano Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Pompano Beach finds the Ordinance is consistent with the Comprehensive Plan.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)(2), advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.063, "Dispensing Controlled Substances," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach, Florida, is hereby created to read as follows:

§ 155.063 DISPENSING CONTROLLED SUBSTANCES.

(A) The following shall be prohibited in medical offices, business offices or professional offices within every zoning district:

(1) On-site dispensing of controlled substances that are identified in Schedule II, III or IV in Section 893.03, 893.035 or 893.036, Florida Statutes, in medical offices, business offices or professional offices unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

(a) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(b) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice or intermediate care facility for the developmentally disabled which is licensed in this state.

(c) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(d) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

(e) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(B) Any request for reasonable accommodations to this section shall be governed by and processed pursuant to Section 155.029, Code of Ordinances.

SECTION 2. That Section 155.029, "Reasonable Accommodation," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach, Florida, is hereby created to read as follows:

§ 155.029 REASONABLE ACCOMMODATION.

(A) This section implements the policy of the City of Pompano Beach for processing of requests for reasonable accommodation to its ordinances, rules, policies, and procedures for persons with disabilities as provided by the Federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) ("ADA"). For purposes of this section, a "disabled" individual or person is an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the City's land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set out in this section.

(B) A request by an applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the Department of Development Services ("DDS"). The reasonable accommodation form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall be substantially in the form set forth below.

(C) Should the information provided by the applicant to the City include medical information or records, including records indicating the medical condition, diagnosis or medical history of the applicant, such individual may, at the time of submitting such medical information, request that the City, to the extent allowed by law, treat such medical information as confidential information of the applicant. The City shall thereafter endeavor to provide written notice to the applicant, and/or their representative, of any request received by the City for disclosure of the medical information or documentation which the applicant has previously requested, be treated as confidential by the City. The City will cooperate with the applicant, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the City shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counselor allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the applicant.

(D) The City Manager, or his/her designee, shall have the authority to consider and act on requests for reasonable accommodation, after notice and public hearing to receive comments, input and information from the public (provided, however, the City Manager or designee shall not be required to render their decision at said public hearing). When a reasonable

accommodation request form has been completed and submitted to the DDS, it will be referred to the City Manager, or designee, for review and consideration. The City Manager, or designee, shall issue a written determination within 45 days of the date of receipt of a completed application and may, in accordance with federal law:

- (1) Grant the accommodation request;
- (2) Grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request; or
- (3) Deny the request, in accordance with federal law.

Any such denial shall be in writing and shall state the grounds therefor. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party (i.e. the applicant or his/her representative) by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City Manager, or designee, may, prior to the end of said 45-day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have 15 days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the 45-day period to issue a written determination shall no longer be applicable, and the City Manager, or designee, shall issue a written determination within 30 days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said 15-day period, the City Manager, or designee, shall issue a written notice advising that the requesting party had failed to timely submit the additional information, and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the City with regard to said reasonable accommodation request shall be required.

(E) In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this section the applicant must show:

- (1) A physical or mental impairment, which substantially limits one or more major life activities;
- (2) A record of having such impairment; or
- (3) That they are regarded as having such impairment.

Next, the requesting party will have to demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing. The foregoing (as interpreted by the courts) shall be the basis for a decision upon a reasonable accommodation request made by the City Manager, or designee, or by the City Commission in the event of an appeal.

(F) Within 30 days after the City Manager's, or designee's, determination on a reasonable accommodation request is mailed to the requesting party, such applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the City Commission who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed.

(G) There shall be no fee imposed by the City in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the City Commission, and the City shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

(H) While an application for reasonable accommodation, or appeal of a determination of same, is pending before the City, the City will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

(I) The following general provisions shall be applicable:

(1) The City shall display a notice in the City's public notice bulletin board (and shall maintain copies available for review in the DDS and the City Clerk's office), advising that public disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.

(2) An applicant may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated by the applicant.

(3) The City shall provide such assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing etc. to ensure the process is accessible.

(J) Reasonable accommodation request form:

1. Name of Applicant: _____
Telephone Number: _____

2. Address: _____

3. Address of housing or other location at which accommodation is requested:

4. Describe qualifying disability or handicap:

5. Describe the accommodation and the specific regulation(s) and or procedure(s) from which accommodation is sought:

6. Reasons the reasonable accommodation may be necessary for the individual with disabilities to use and enjoy the housing or other service:

7. Name, address and telephone number of representative, if applicable:

8. Other information:

9. Signature of Applicant or Representative, if applicable, or Qualifying Entity:

_____ Date _____

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2010.

PASSED SECOND READING this _____ day of _____, 2010

LAMAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERK

GBL/jmm
2/5/10
l:ord/ch155/2010-109a

ORDINANCE 5, 2010

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2
3
4 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM
5 BEACH GARDENS, FLORIDA AMENDING CHAPTER 78. LAND
6 DEVELOPMENT. BY ADOPTING NEW SUBSECTION 78-
7 159(j)(47.1) AND BY AMENDING TABLE 21: PERMITTED,
8 CONDITIONAL AND PROHIBITED USE CHART IN ORDER TO
9 ADOPT REGULATIONS PERTAINING TO MEDICAL OFFICES;
10 FURTHER AMENDING CHAPTER 78 AT SECTION 78-751.
11 DEFINITIONS. BY REPEALING THE DEFINITIONS OF
12 "DRUGSTORE OR PHARMACY", "OFFICE, MEDICAL OR
13 DENTAL", AND "OFFICE, BUSINESS OR PROFESSIONAL" AND
14 READOPTING SAME, AS REVISED, IN ORDER TO REVISE AND
15 CLARIFY SUCH DEFINITIONS; PROVIDING THAT EACH AND
16 EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 78.
17 LAND DEVELOPMENT. SHALL REMAIN IN FULL FORCE AND
18 EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS
19 CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO
20 CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER
21 PURPOSES.
22
23

24 WHEREAS, the City Council of the City of Palm Beach Gardens has determined
25 that in the absence of regulations identifying where narcotic drugs may be dispensed,
26 the City's residents, visitors, and businesses are more vulnerable to criminal actions,
27 despite the provision of law enforcement services; and
28

29 WHEREAS, the City Council finds that the illegal sale, use, and delivery of
30 controlled substances is a threat to the health, safety, and welfare of the residents of the
31 City; and
32

33 WHEREAS, the City Council has recently been made aware by law enforcement
34 and news reports that a pattern of illegal drug use and distribution has been associated
35 with pain management clinics in neighboring municipalities, which dispense narcotic
36 drugs on site; and
37

38 WHEREAS, the City Council has determined that a need exists to adopt
39 regulations that identify where narcotic drugs may be dispensed in order to deter
40 criminal activity and promote the public health, safety, and welfare; and
41

42 WHEREAS, it is not the intent of this Ordinance to interfere with the legitimate
43 medical use of controlled substances, but rather to prohibit the dispensing of narcotic
44 drugs on site at medical offices, to the extent permitted by law; and
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47

1 **WHEREAS**, this Ordinance was reviewed by the Planning, Zoning, and Appeals
2 Board, sitting as the Local Planning Agency, at a public hearing on February 9, 2010,
3 and the Board recommended approval by a vote of 7 to 0; and
4

5 **WHEREAS**, the City Council deems approval of this Ordinance to be in the best
6 interests of the health, safety, and welfare of the residents and citizens of the City of
7 Palm Beach Gardens and the public at large.
8

9
10 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
11 **OF PALM BEACH GARDENS, FLORIDA** that:
12

13 **SECTION 1.** Chapter 78, Land Development of the Code of Ordinances of the
14 City of Palm Beach Gardens, Florida is hereby amended by adopting new subsection
15 78-159(j)(47.1) and annotating Table 21: Permitted, Conditional and Prohibited Use
16 Chart at "Office, medical or dental" by adding "Note" 47.1 in order to adopt regulations
17 regarding the locations and circumstances under which narcotic drugs may be
18 dispensed; providing that Section 78-159 shall hereafter read as follows:
19

20 Sec. 78-159. Permitted uses, minor and major conditional uses, and prohibited uses.
21

22 (a) – (i) (These subsections shall remain in full force and effect as previously
23 enacted.)
24

25 Table 21: Permitted, Conditional, and Prohibited Use Chart. is hereby amended such
26 that "47.1" shall be added to the "Note" column at "Office, Medical or Dental."
27

28 (j) *Additional Standards.* The following standards apply to specific uses as
29 indicated in the "Note" column of Table 21.
30

31 (1) – (47) (These subsections shall remain in full force and effect as previously
32 enacted.)
33

34 (47.1) Office, medical or dental. Medical or dental offices shall be subject to the
35 following regulations:
36

37 a. On-site dispensing of controlled substances that are identified in
38 Schedules II, III, or IV in Sections 893.03, 893.035, or 893.0356, Florida Statutes,
39 is strictly prohibited, unless otherwise expressly permitted by statutory or general
40 law. However, the following are exempt from this prohibition:
41

42 1. A health care practitioner when administering a controlled
43 substance directly to a patient if the amount of the controlled substance is
44 adequate to treat the patient during that particular treatment session.
45
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1 2. A pharmacist or health care practitioner when administering a
2 controlled substance to a patient or resident receiving care as a patient at
3 a hospital, nursing home, ambulatory surgical center, hospice, or
4 intermediate care facility for the developmentally disabled which is
5 licensed by the state.

6
7 3. A health care practitioner when administering a controlled
8 substance in the emergency room of a licensed hospital.

9
10 4. A health care practitioner when administering or dispensing a
11 controlled substance to a person under the age of 16.

12
13 5. A health care practitioner when dispensing a one-time, 72-hour
14 emergency resupply of a controlled substance to a patient.

15
16 b. Additionally, the health care practitioner responsible for the operation
17 and/or supervision of any medical or dental office shall execute an affidavit
18 acknowledging the regulations set forth hereinabove prior to payment of the
19 required business tax, and annually thereafter upon renewal of same prior to the
20 issuance of a business tax receipt. Failure or refusal to execute the required
21 affidavit shall constitute prima facie evidence that the subject medical or dental
22 office is operating in violation of the code of ordinances, which may result in code
23 enforcement action, revocation of business tax receipt, and/or any other actions
24 permitted by law.

25
26 (48) – (70) (These subsections shall remain in full force and effect as previously
27 enacted.)

28
29 **SECTION 2.** Chapter 78, Land Development of the Code of Ordinances of the
30 City of Palm Beach Gardens, Florida is hereby amended at Section 78-751.
31 "Definitions." by repealing the definitions for the terms "Drugstore or pharmacy", "Office,
32 medical or dental", and "Office, business or professional" and readopting same as
33 revised, providing that each of which shall be placed in alphabetical order in the list of
34 definitions; providing that "Drugstore or pharmacy", "Office, medical or dental", and
35 "Office, business or professional" shall hereafter be defined and read as follows:

36
37 *Drugstore or pharmacy, general* means a retail store which sells or dispenses
38 drugs, including "controlled substances" as defined in Chapter 893, Florida Statutes,
39 pharmaceuticals, medical supplies, items for personal hygiene, and a wide variety of
40 convenience or consumer goods such as beverages, pre-packaged foods, books and
41 magazines, beauty products, tobacco products, and alcoholic beverages.
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1 Office, medical or dental means an establishment facility offering patients
2 medical services, examinations, and treatments, by professionals trained in healing or
3 health-related practices, including medical doctors, dentists, chiropractors, osteopaths,
4 chiropractors, naturopaths, optometrists, or any similar profession as is legal in the State
5 of Florida providing health care services to the public by physicians, dentists,
6 chiropractors, osteopaths, physical therapists, nurses, acupuncturists, podiatrists,
7 optometrists, psychiatrists (who are also known as health care practitioners), or others
8 who are duly licensed to practice their respective medical or dental profession in the
9 State of Florida, as well as others, including, but not limited to, technicians and
10 assistants who are acting under the supervision and control of a licensed health care
11 practitioner.

12
13 Office, business or professional means an establishment providing executive,
14 management, and professional services to the public, including, but not limited to, the
15 following: advertising services, business offices of private companies, business offices
16 of utility companies, public or nonprofit agencies, trade associations, and employment
17 offices; excluding day labor and labor pool services; professional or consulting offices
18 for accounting, architecture, computer technology, design, engineering, landscape
19 architecture, law, urban planning, and similar professions; property and financial
20 management, real estate; secretarial and telecommunication services; and travel
21 agencies. This definition does not include offices for the treatment of animals on the
22 premises nor does it include Medical or Dental Offices.

23
24 **SECTION 3.** All ordinances or parts of ordinances in conflict be and the same are
25 hereby repealed.

26
27 **SECTION 4.** Should any section or provision of this Ordinance or any portion
28 thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction
29 to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

30
31 **SECTION 5.** Specific authority is hereby given to codify this Ordinance.

32
33 **SECTION 6.** This Ordinance shall become effective immediately upon adoption.

34
35
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37 (The remainder of this page intentionally left blank)

PASSED this 4th day of FEBRUARY, 2010, upon first reading.

PASSED AND ADOPTED this 10th day of February, 2010, upon second and final reading.

CITY OF PALM BEACH GARDENS FOR AGAINST ABSENT

BY: [Signature] ✓ _____
Joseph R. Russo, Mayor

[Signature] ✓ _____
David Levy, Vice Mayor

[Signature] ✓ _____
Eric Jablin, Councilmember

[Signature] ✓ _____
Jody Barnett, Councilmember

[Signature] ✓ _____
Robert G. Premuroso, Councilmember

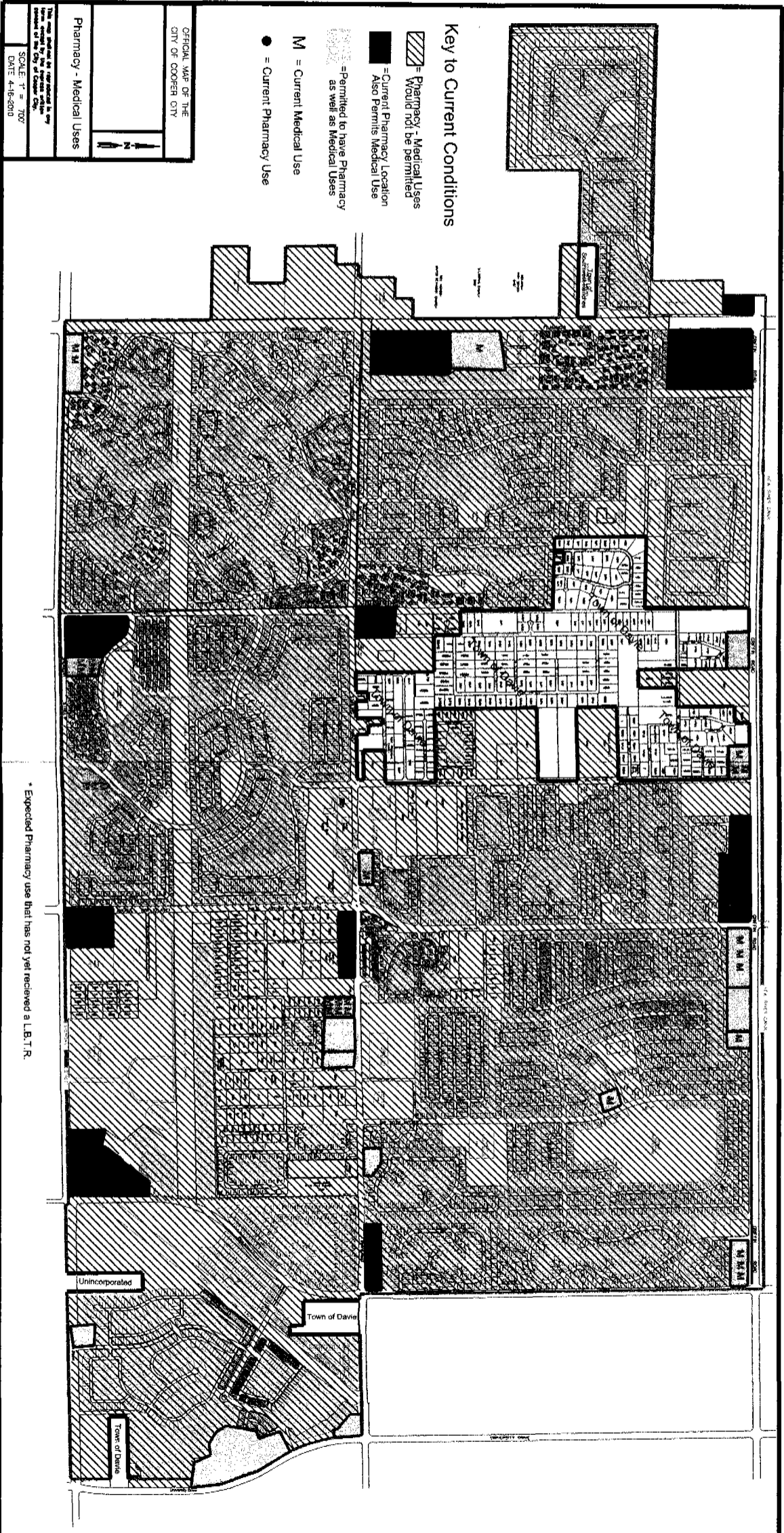
ATTEST:

BY: [Signature]
Patricia Snider, CMC, City Clerk





APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: [Signature]
R. Max Lohman, City Attorney

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Key to Current Conditions

-  = Pharmacy - Medical Uses Would not be permitted
-  = Current Pharmacy Location Also Permits Medical Use
-  = Permitted to have Pharmacy as well as Medical Uses
- M** = Current Medical Use
-  = Current Pharmacy Use

OFFICIAL MAP OF THE
CITY OF COOPER CITY



Pharmacy - Medical Uses

This map depicts the current conditions for pharmacy and medical uses in the City of Cooper City.
SCALE: 1" = 700'
DATE: 4/16/2010

* Expected Pharmacy use that has not yet received a L.B.T.R.

ORDINANCE NO. 10-5-1

AN ORDINANCE OF THE CITY OF COOPER CITY, FLORIDA AMENDING CHAPTER 21 "UNIFIED LAND DEVELOPMENT CODE", SECTION 21-8 "DEFINITIONS"; IN ORDER TO AMEND DEFINITIONS RELATING TO REGULATION OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; AMENDING CHAPTER 23 "ZONING DISTRICTS", ARTICLE IV "DISTRICT REGULATIONS" TO PROVIDE FOR AMENDED ZONING REGULATIONS RELATED TO REGULATION OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; AMENDING ARTICLE V "SUPPLEMENTARY REGULATIONS", TO CREATE SUPPLEMENTAL REGULATIONS OF MEDICAL OFFICES AND CLINICS, MEDICAL AND DENTAL LABORATORIES, AND PHARMACIES; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Cooper City ("City Commission") finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with medical offices and clinics which provide "pain management" services and dispense narcotic controlled substances on-site as aided by those who act in concert with said establishments ; and

WHEREAS, the Miami Herald, Sun-Sentinel and other news media outlets have published numerous newspaper stories in the recent past describing a "pipeline" of trafficking

drugs from South Florida "pain management to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, increased criminal activity and other secondary effects including parking, noise, loitering and littering associated with the narcotics-related activities at such clinics is very significant and threatens to undermine the economic health of the City's development and redevelopment efforts, by creating negative secondary effects which affect the commercial and residential properties surrounding these clinics; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, through adoption of SB 462 (2009); and

WHEREAS, despite such legislative efforts by the Florida Legislature, the state has only raised half of about \$1 million needed to establish the database, and implementation of these legislative mandates is delayed; and

WHEREAS, a recent Broward County grand jury reported that every three days, a new pain management clinic opens in Broward and Palm Beach counties; and

WHEREAS, in the last six months of 2008 alone, such clinics dispensed nearly 9 million doses of the controlled substance oxycodone in South Florida □ the equivalent of more than two doses for every man, woman and child in Miami-Dade, Broward and Palm Beach counties; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic controlled substances on-site at medical clinics and offices (or in close proximity thereto), subject to specific exceptions; and

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WHEREAS, during a public hearing on March 15, 2010, the Planning and Zoning Board, sitting as the City's Local Planning Agency, reviewed this Ordinance and made a recommendation to the City Commission; and

WHEREAS, following proper notice to the public and after having received input and participation by interested members of the public and staff, and having considered the recommendation of the Planning and Zoning Board, the City Commission finds this Ordinance consistent with its Comprehensive Plan, as well as Florida and federal law; and

WHEREAS, the City Commission finds that this Ordinance is consistent with the City's adopted Comprehensive Plan and necessary for the preservation of the public health, safety and welfare of the City's residents; and

WHEREAS, the City Commission has held two public hearings in accordance with Florida law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF COOPER CITY, FLORIDA: I

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. City Code Amended. That Section 21-8 of Chapter 21 "Unified Development Code" of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 21-8. Definitions.

* * *

Medical office or clinic: An establishment where patients, who are not lodged overnight except for observation or emergency treatment, are admitted for examination and treatment by a

Proposed additions to existing City Code text are indicated by an underline; proposed deletions from existing City Code text are indicated by stfikehr-eugh.

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person or group of persons practicing any form of healing or health-building services to individuals, whether such persons be medical doctors, chiropractors, osteopaths, chiropodists, naturopaths, optometrists, dentists, or any such profession, the practice of which is lawful in the State of Florida. Pharmacies, as defined in this section, are not medical offices or clinics.

* * *

Pharmacy: Any establishment offering on-site dispensing of prescription drugs.

* * *

Retail, neighborhood: An establishment, not exceeding thirty thousand (30,000) square feet of gross feet area, serving a limited market area and engaged in the retail sale or rental, from the premises, of frequently or recurrently needed items for household use, but which shall not include any establishment which meets the definition of "pharmacy" as provided in this section. Typical uses include apparel stores, bakeries and delicatessens that sell all food prepared at retail on the premises, candy stores, drugstefes, florists, garden supply stores, gift shops, grocery stores, hardware stores, hobby supply shops, ice cream shops, meat markets other than fish or seafood, jewelry stores, music and video tape rental stores, pet supply and grooming, souvenir shops, variety and general merchandise stores.

Section 3. City Code Amended. That Article IV "District Regulations" of Chapter 23 "Zoning Districts" of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 23-10. Schedule of Use Regulations.

COOPER CITY CODE

USE REGULATIONS SCHEDULE

Zoning Districts

Residential

Use Type

3

Commerical Uses

MINIM=

Non-residential

0

2

MEM

PPP

PPP

PP P

Planned

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Special

P M X 1 111C

P.

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Sec. 23-44. OP, Office park district.

* * *

(c) Permitted uses. In the OP district, no building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than the following:

(6) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

(7) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * * Sec. 23-46. B-1, Planned neighborhood business district.

* * *

(c) Permitted uses. In the B-1 district, no building or structure or part thereof shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

(4) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

(7) Personal improvement services;

(8) Pharmacy, subject to Sec. 23-104.1.

(83) (9) Repair, small appliance;

(4) (10) Restaurant, general;

(10) (11) Retail, neighborhood;

(11) (12) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except in an antique store or as incidental to the sale of new merchandise;

(12) (13) Sewage lift or pumping station, subject to section 23-107;

(13) (14) Special residential facility, type 3, subject to section 23-109;

(14) (15) Transformer substation, subject to section 23-112;

(15) (16) Water or wastewater plant, local, subject to section 23-114.

(16) (17) Community assembly, subject to the supplemental regulations contained in Section 23- 95(b).

Sec. 23-48. B-2, Planned community business center district.

* * *

(c) Permitted uses. In the B-2 district, no building or structure or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

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* * *

(7) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

(10) Personal improvement services;

(11) Pharmacy, subject to Sec. 23-104.1.

(11) (12) Recreation, indoor;

(12) (13) Repair, small appliance;

(13) (14) Restaurant, general;

(11) (15) Retail, community;

(15) (16) Retail, neighborhood;

(44) (17) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except in an antique store or as incidental to the sale of new merchandise;

(17) (18) Sewage lift or pumping station, subject to section 23-107;

(-I-8) (19) Special residential facility, type 3, subject to section 23-109;

(19) (20) Transformer substation, subject to section 23-112;

(20) (21) Veterinary services, subject to section 23-113;

(21) (22) Water or wastewater plant, local, subject to section 23-114.

(22) (23) Community assembly, subject to the supplemental regulations contained in Section 23- 95(b).

Sec. 23-50. B-3, General business district.

* * *

(b) Permitted uses. In the B-3 district, no building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following specified uses:

* * *

(8) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * *

(13) Plant nursery, retail;

(14) Pharmacy, subject to Sec. 23-104.1.

(14) (15) Recreation, indoor;

(15) (16) Recreation, outdoor;

(44) (117) Repair, small appliance; (17) (18) Research and development;

(1-8) (19) Restaurant, general; (19) (20) Restaurant, fast food; (40) (21) Retail, community;

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(21) (22) Retail, general, excluding any open air sale or display of machinery, farm implements or construction equipment and provided that the sale and rental of utility trailers shall be limited to display and storage of not more than ten (10) such trailers;

(22) (23) Retail, neighborhood;

(23) (24) Retail, secondhand goods, provided that no secondhand or used merchandise shall be offered for sale, displayed or stored except within a fully enclosed building;

(24) (25) Sewage lift or pumping station, subject to section 23-107;

(25) (26) Special residential facility, type 3, subject to section 23-109;

(26) (27) Transformer substation, subject to section 23-112;

(27) (28) Vehicle and equipment repair, excluding painting and bumping or any open air sale or display of machinery, farm implements or construction equipment;

(28) (29) Veterinary services, subject to section 23-113;

(29) (30) Water or wastewater plant, local, subject to section 23-114.

(20) (31) Community assembly, subject to the supplemental regulations contained in Section 23- 95(b).

* * *

Sec. 23-56. 1-1, Light industrial district.

* * *

(c) Permitted uses. No building or structure, or part thereof, shall be erected, altered or used, or land or water used, in whole or in part, for other than one or more of the following uses:

(1) Communication tower;

(2) Building maintenance services;

(3) Building supplies, and service businesses affiliated therewith;

(4) Air conditioning, landscaping, painting, drywall, general irrigation, tile and fence contractors, and service business affiliated therewith;

(5) Light manufacturing, provided that boat building or repair shall not be located within five hundred (500) feet of any residentially zoned property;

(6) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

(7) Repair, small appliance;

(8) Research and development;

(9) Sewage lift or pumping station;

(10) Transformer substation;

(11) Utilities, major, limited to transformer and electrical switching station;

(12) Water or wastewater plant, local;

(13) Wholesale and warehousing, provided that all such activities shall occur in buildings for single use purposes not to be less than one thousand seven hundred fifty (1,750) square feet in gross floor areat, in accordance with the following:

- a. Wholesale and/or warehousing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall only be distributed to licensed health care practitioners, pharmacists, or other persons duly licensed to purchase or receive such substances in accordance with Florida law.
- b. Except as prohibited by the above, Sspecial sales, open to the public, may be allowed by special permit up to four (4) times per year to allow for the disposal of excess

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inventory by warehouses, distribution and storage buildings and wholesale showrooms, pursuant to the provisions of section 9-28 of this code.

(14) Professional office uses;

(15) Accessory commercial uses, including but not limited to, coffee shops, sandwich shops, restaurants, office supplies and equipment, and copy and printing centers ariel□pliamiaieies; provided, however, that the total area for such accessory uses may not consume more than twenty percent (20%) of the square footage of any single building within the industrial development;

* * *

Sec. 23-60. M/I, Medical/Institutional district.

* * *

(c) Permitted uses. In the M/1 district, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the following uses:

- (1) Hospital;
- (2) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;
- (3) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

* * * Sec. 23-70. PMUD, Planned mixed-use development district.

* * *

(d) Permitted uses. In the PMUD District, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the following uses:

- * * * (10) Drug store/pharmacy, subject to Sec. 23-104.1;
- * * * (15) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;

Sec. 23-72. PCD, Planned commercial development district.

(a) Permitted uses. In the PCD district, no building or structure, or part thereof, shall be erected, altered, or used, or land or water used, in whole or in part, for other than one or more of the thllowing uses:

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- (7) Medical office or clinic, subject to Sec. 23-101.1 and Sec. 23-104.1;
- (8) Medical or dental laboratory, subject to Sec. 23-101.1 and Sec. 23-104.1;

Section 4. City Code Amended. That Section 23-84 of Article V "Supplementary Regulations" of Chapter 23 "Zoning Districts" of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec. 23-84. Accessory uses.

* * *

(c) Office buildings. Buildings used primarily for business and professional or medical office uses may also include commercial establislu-nents providing goods and services to the patrons and employees of the principal uses, subject to the following supplementary regulations.

(1) The aggregate gross interior floor area of the accessory uses shall not exceed five (5) percent of the total gross floor area of the office park or five (5) percent of the gross floor area of the building in which the accessory uses are located.

(2) The permitted accessory uses shall include only the following:

- a. newsstand,
- b. florist, and/or
- c. pharmacy, and
- d. barbershop or beauty shop.

Section 5. City Code Amended. That Article V "Supplementary Regulations" of Chapter 23 "Zoning Districts" of the Code of Ordinances of the City of Cooper City is hereby amended to read as follows:

Sec 23-101.1. Medical offices or clinics, and medical or dental laboratories. Medical offices or clinics, and medical or dental laboratories ("medical uses"), as defined in Section 21-8 of the Land Development Code, in whatever districts permitted herein, shall be subject to the following supplemental regulations:

(a) On-site dispensing of controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, is prohibited, unless otherwise expressluermitted as follows:

(1) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

al A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care at a hospital, nursing facility, institution or asylum, ambulatory surgical center, or hospice which is licensed in this state.

(3) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care at an intermediate care facility for the developmentally disabled which is licensed in this state.

(4) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(5) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(b) Medical offices or clinics, and medical or dental laboratories ("medical uses") shall also be subject to Sec. 23-104.1.

* * *

Sec 23-104.1. Pharmacies, medical offices or clinics, and medical or dental laboratories - location restrictions.

(a) Pharmacies.

(1) Unless approved as a conditional use pursuant to Section 23-152 of the Code of Ordinances, no pharmacy shall be permitted to locate within the same establishment, within the same shopping center, or within the same parcel of land or tract of any medical office or clinic, or any medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time.

(2) Outparcels. The location restriction of subsection (1) above shall not apply to a pharmacy which is located within an outparcel as defined in Section 21-8 of the Code, within the same shopping center, or within the same parcel of land or tract, as a medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time. However, no pharmacy shall be permitted to locate within the same outparcel as any medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, unless approved as a conditional use.

(b) Medical Offices or Clinics, or Medical or Dental Laboratories.

(1) Unless approved as a conditional use pursuant to Section 23-152 of the Code of Ordinances, no medical office or clinic, or any medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled

substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall be permitted to locate within the same establishment, within the same shopping center, or within the same parcel of land or tract of any pharmacy.

(2) Outparcels. The location restriction of subsection (1) above shall not apply to a medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, which is located within an outparcel as defined in Section 21-8 of the Code, within the same shopping center, or within the same parcel of land or tract, as a pharmacy. However, no medical office or clinic, or medical or dental laboratory, which is staffed by health care practitioners licensed to prescribe controlled substances identified in Schedule II, III, or IV in Sections 893.03, 893.035, or 893.0355, Florida Statutes, as may be amended from time to time, shall be permitted to locate within the same outparcel as a pharmacy, unless approved as a conditional use.

(c) The foregoing location restrictions shall not apply to pharmacies or medical offices or clinics, or medical or dental laboratories, for which an application for a business tax receipt has been submitted prior to the date of adoption of this Ordinance.

fd) These supplemental regulations are not to be interpreted to limit the lawful operation of a hospital or institution or asylum separately defined and permitted in zoning districts according to separate regulations.

* * *

Section 6. Conflicts. All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 8. Inclusion in the Code. That it is the intention of the City Commission of the City of Cooper City, and it is hereby ordained that the provisions of this Ordinance shall

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become and be made part of the Cooper City Code of Ordinances; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "Ordinance" may be changed to "Section" or other appropriate word.

Section 9. Effective Date. That this Ordinance shall take effect immediately upon adoption at second reading.

PASSED AND ADOPTED on first reading this 13th day of April, 2010,

PASSED AND FINAL ADOPTION on second reading this 25th day of May, 2010.

ATTEST:

Susan Poling CITY CLERK

Debb isinger MA R

APPROVED AS TO FORM:

David Wolpin CITY ATTORNEY

ROLL CALL:

Mayor Eisinger Commissioner Mallozzi Commissioner Sims Commissioner de Jesus

Commissioner Curran

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LCOOPER CITY

Someplace Spedal

MEMORANDUM

To: City COMMISSiall Members

From: Matt Wood, Growth Management Director

Thru: Bruce Loucks, City Manager

Date: March 17, 2010

Re: Revision to Section 21-8 and Chapter 23 for Pharmacy uses

ANALYSIS: The City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics -which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on "pain management clinics" to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for municipal zoning regulation-

Current City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (MUD) for which the use is anticipated would be considered appropriate in the Monterola Development which has that zoning designation. Similarly, medical office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted.

The attached draft ordinance would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating colocation of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location
5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in Ibis district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

Page 1 of 2

MEMORANDUM CITY COMMISSION 3123/10

REVISION TO SECTION 21-8 AND CHAPTER 23 FOR PHARMACY USES

PLANNING AND ZONING BOARD RECOMMENDATION: The Planning and Zoning Board, at their meeting on March 15, 2010, motioned to table the changes to amend section 21-8 and chapter 23, of the Municipal Code of Ordinances relative to pharmacies and to request that the Commission extend the moratorium to a date that will permit the Board to further investigate the scope of this ordinance including scheduling a workshop; and the City Attorney providing them with similar ordinances and other background material. Motion made by Mr. Aronson and seconded by Mr. Sands. On roll call there were five aye votes and four no votes made by Mr. Rodriguez, Mr. Valenti, Mr. Konhauzer, and Mr. Roper. Motion was approved.

Page 2 of 2

P&Z BOARD MEETING MINUTES OF MARCH 15, 2010 DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23 OF THE MUNICIPAL CODE OF ORDINANCES
DRAFT

7. NEW BUSINESS:

A. DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE TO PHARMACIES

Mr. Wood explained that the City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on "pain management clinics" to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for municipal zoning regulation. Current City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (PMUD) for which the use is anticipated would be considered appropriate in the Monterra Development which has that zoning designation. Similarly, medical office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted.

Mr. Wood continued to explain that the attached draft ordinance would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating co-location of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location

5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in this district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

As requested by the Board at the last meeting, the City Attorney has provided additional information which is included as backup material to this report.

Mr. Wood concluded that the Planning and Zoning Board is requested to discuss and comment on the proposed Code revision. The Board's recommendation will be forwarded to the City Commission for action.

Ms. Lundgren commented that as requested at the last meeting she has provided additional information to the packets that addresses the 2009 Legislation that was passed concerning pain

Page 1 of 14

P&Z BOARD MEETING MINUTES OF MARCH 15, 2010 □ DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23 OF THE MUNICIPAL CODE OF ORDINANCES

DRAFT

management clinic regulation and it has unfortunately yet to be implemented. The 2009 Legislation did provide for registration of clinics that engage in pain management services and dispense these controlled substances on site. However, the registration requirement doesn't have any real effect with any sanctions or administrative penalties as of yet. There is rule making that has been engaged in at this time to address further regulation, but at this point there is no real stick with this legislation. Furthermore although the Legislation provided for an electronic prescription drug monitoring program that would prevent the persons from coming to these clinics, from doctor shopping from one clinic after another, that has yet to be put into effect due to the cost of this monitoring program. The Department of Health is struggling with financial cutbacks. It is expected to be another year before there is any effect monitoring program as that Legislation had contemplated. Although we are early in the Legislative Session for 2010 there have been a couple of Legislative bills proposed to address the issue that we are dealing with. One of those is going to address the pain clinic operation and management by doctors. Providing that doctors must have no history of disciplinary action if they are to open a pain management clinic and another would ban the dispensing of more than a 72 hour supply of these controlled narcotics on site at a clinic. She commented that it remains to be seen if these bills will go forward, but at this time the problem continues to spread across south Florida with very unfortunate consequence, which she asked Commander Stoner to address as well. She then commented that she has also provided a number of cities statuses relative their regulations. She added that following the distribution of this report, she mentioned that Boca Raton has passed regulations on first reading which is essentially the same this ordinance as well as Palm Beach Gardens, which is prohibiting the on-site dispensing of controlled substances. She then remarked that she had included several newspaper articles that are related to these clinics. Despite all the efforts statewide at the Legislative level what Staff has presented in the form of this code change is another opportunity for them to try and get a handle on this huge issue.

Mr. Roper asked Commander Stoner if he would give the Board insight into whether we have had any problems or are currently having any problems as it relates to this matter.

Commander Marvin Stoner, Broward Sheriff's Office introduced himself and then introduced Detective Darrin Rush, and explained that Detective Rush was one of the three main persons that are responsible for what activity they have been able to develop at the Simfa Rose Pharmacy. He held up a stack of papers and explained that everything in that stack was an arrest just at that location. He commented that he has been in this City for 25 years and he has never seen anything like this and this was just a little over a year and a half. It has gotten to the point where you have a facility probably no bigger than the inside of these table dispensing Oxycontin pills. It is strictly a cash and carry business. As a brief overview they go in there for Oxycontin. They go in there with prescriptions, which are in upwards of 250 pills in a script. He didn't know who could use 250 Oxycontin pills at any given time in your life. He said that not only are they getting the script for 250 pills, but as the Detective can explain is that many of the people they arrest already have 250, 500, 750 pills in their possession that they have shopped

other pain clinics for. Not only are they finding these people to be in possession of this drug, but they have also been in possession of marijuana, cocaine, heroine and xanax. He remarked that the biggest problems they have is what goes on once they walk out of the pharmacy. They can't even wait to get out of the parking lot to pass the pills around, to crush them and snort them, to crush them, heat them and stick them in their arms. They are finding syringes, gauze and everything else

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around there. The service stations and all of the other establishments nearby have a been putting up signs to indicate don't use the bathrooms and they aren't going to let them in for the simple reason is that once they get in there they are out of sight and want to ingest their drugs. They go into these places to sit down and wait because their prescriptions aren't going to be filled immediately and there are so many people there that the business is heavy. During the time these people are in the parking lot, they have had them for disorderly conduct, urinating in public, banging on doors trying to get into other establishments and even trying to get inside the pharmacy when they are closed and signs up that say they are closed, but they can't wait. Many of these people are in the parking lot because they have no place to go because they are not Cooper City residents. Better than three fourths of them from out of not only the County, but out of State. We are known as the pill mill factory in the Country. They are coming down from Kentucky, Tennessee, Georgia and it has gotten to the point now where they know our deputies are in the parking lot, they will stop on their way in Orlando just to rent a car with State tags on it so that they are not as obvious. He passed around some photos to the Board. He commented that not only do they get the violations for narcotics, but they have traffic violations and suspended licenses, stolen invalid tags, and stolen cars. They have people they have an-ested for loitering, because they are hanging around waiting. They have arrested those for violation of probation, and that violation of probation generally has to do with drugs, burglary, robbery and it has to do with assaults. These are the type of people that are coming into our neighborhoods. They have had one armed robbery at this facility and that is because it is full of drugs and it's full of cash. This is a cash and carry business only. He remarked that when we talk about the individuals that have come into this location, some of the people they have stopped and some of the equipment they carry with them and he showed a photo.

Ms. McCoy interjected that she would like to know where this facility is located. Commander Stoner responded that this facility is located in The Center, which is on Stirling Road and Palm Avenue.

Mr. Aronson asked if this was a co-location issue.

Commander Stoner responded no, they only distribute and don't prescribe.

Mr. Aronson commented that the ordinance they are trying to pass is an ordinance that prevents the co-location of a pain clinic with a pharmacy, so the ordinance they are looking at tonight would not affect this kind of operation or would it. Commander Stoner responded that in a manner of speaking, no, but the problem is that this gentleman wants to move to a bigger location.

Mr. Aronson didn't doubt anything Commander Stoner was saying, but was simply questioning whether the type of ordinance the Board is seeking to pass would have the affect of preventing or restricting this type of operation. He was not sure that was going to happen.

Commander Stoner remarked that this operation is here right now and is a pharmacy. Take this operation and add a pain clinic to it that wants to come into the City, double it, triple it, and

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quadruple it. Now you have maybe an 800 square foot facility doing one thing, dealing out prescription medicine with a prescription. Now put the pain clinic next to it and put the pill mill within it and the amount of people that will be there. What you see right here will be what you see there. Everything will not be in one location. They will be there for a longer period of time. They will come and see their doctor, they will get their MRI, and they will wait and wait until they get

their pills and leave. He pointed out the locations that this place is in by itself. Down the street you have a high school, around the corner you have a middle school, and right next to it you have a Temple. Behind it you have a church. Going in the other direction on the west side of SW 100th Avenue, you have a Dairy Queen, a Wendy's and a sub shop. Every day kids walk through here. The same thing will happen no matter where in this City you put the next step up which would be a pain clinic. Maybe there isn't a lot they can do with this place, he didn't know, except what they are trying to do with it, but you can stop what is going to happen next. That would be the biggest thing this Board could do by putting this ordinance forth tonight. He remarked that this isn't over and until the Florida Legislature does something with it, this will continue. These places are all over Davie and everywhere else and now they are trying to come into Cooper City. He mentioned there is space for them in some of our shopping centers and all they have to do is come in and set up and you would have exactly what this is many times over.

MOTION: TO APPROVE FOR DISCUSSION CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES. MOTION MADE BY MR. SANDS AND SECONDED BY MS. SORI. Motion was approved by voice vote.

Ms. Sori commented that she would approve this tonight because the Commander thinks it's necessary for our health, welfare and safety. She then asked what happens with legitimate pain clinics. Wouldn't everything be solved if this was done on a State level instead of going city by city that the State bans these types of pain clinics? She wanted to know if on the State level or the County level that only doctors within their doctor offices can prescribe these pills or drugs that the people would not go to these pain clinics for their prescriptions, but would have to go to their doctors. There are certain aspects of the proposal coming from Tallahassee saying only prescribing a 72 hour supply of these drugs and cancer patients need a lot more than a 72 hour supply. There has to be exceptions to all of this. She wants to know what happens if a legitimate pain clinic comes into our City and what they can do about it.

Mr. Konhauzer remarked that they discussed this a couple of weeks ago and since then every paper he read had exactly what everyone was discussing and he was shocked and felt uncomfortable they didn't pass it at their last meeting and thanked Staff and Commander Stoner for bringing this to the Board's attention. Mr. Valenti commented that he has missed the last 2 meetings and will pass this. He remarked that what bothers him is listening to Commander Stoner and asked what they can do with the doctors that prescribe these pills. Not just a script, but 250 pills and who in their right mind would use that many pills. He mentioned that he does get some samples from his doctor because Medicare doesn't everything the doctor wants him to take, but even at that he doesn't get 200, but maybe a week or two supply. Isn't there some agency or the State that can go after these

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doctors who write these prescriptions? They are walking in with legitimate prescriptions to get these mega pills and what happens there.

Ms. Keirnan commented that a lot of these prescriptions are not legitimate and are fraudulent. She mentioned that she used to be a police officer and worked a lot of fraud cases where they have fraudulent scripts and have worked on suicides where they have overdosed an Oxycontin. She said they have hundreds and hundreds of these pills. So the Board can understand how strong on Oxycontin pill is, she explained that one 80mg crushed up is the equivalent to 16 Percocets, just one of these pills and this is what these people are taking. She commended BSO and knows they are on top of these people hardcore, because she has seen them in the past two weeks at least 6 or 7 times. She remarked that it does draw so much crime and asked if the pharmacy has been burglarized yet. She explained they had a pain clinic open in Plantation. Just inside of two months they had a robbery in the plaza behind it, they had people calling all the time about everybody hanging in the parking lot and scaring them. She mentioned that it is also taxing on the police. It took hours and hours of time to do the paperwork and it will get out of control if more of these move in.

Ms. McCoy commented that with a traditional nationally branded pharmacy are they going to be allowed to have an in-office clinic and be able to write their scripts and is this included in this ordinance.

Ms. Lundgren responded yes and the distinction is that the CVS, Walgreens and Publix and maybe some other grocery stores also do in-store clinics, but they are staffed by nurse practitioners who are not authorized under Florida Law to prescribe controlled substances. Those urgent care clinics would not be affected by this.

Mr. Aronson wanted to know if there was a definition in the draft ordinance of healthcare practitioner and then asked if a healthcare practitioner was a medical doctor or is it something else less than that. He said that it is referred to healthcare practitioner in the ordinance that a pharmacist or healthcare practitioner would administrate. If a healthcare practitioner was a medical doctor then they should be careful if they are seeking to regulate medical doctors who are regulated by a far different set of guidelines than municipal ordinances. They need to make sure that they are sticking within the municipal code and zoning code that they are confined by. He then referred to page 4 of the proposed ordinance and what is retail neighborhood and then talks about an establishment not exceeding...but he remarked that he was not making the connection as to what the term retail neighborhood means when he reads the definition. He then referred to the work "establishment" and this ordinance is trying to deal with co-location and didn't know if establishment was defined either. He explained that his problem with what they are trying to do is that he believes that what Commander Stoner and the material he has read is that there is a legitimate problem and he believes they need to do something to regulate it. What he fails to see is that how this ordinance solves the problem, because if what is suggested is that pharmacies need to be better regulated from a zoning standpoint, then he could live with the fact that they don't want pharmacies in office buildings because a pharmacy is a retail use and that makes sense to him. But, if what they are trying to do is limit this co-location because they don't want pain clinics dispensing dnigs as a pharmacy, then these guys will be smart and rent suite 3A and 2B and will have their pharmacy in one and their pain clinic in the other and you would walk

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across the hall to get their drugs. He did not believe this ordinance is going to solve the problem. He expressed his concern that legitimate doctors and Mr. Sands gave the example at the last meeting that the pediatrician that dispenses Adderal I is dispensing a regulated drug and he didn't think that was what they were intending to do either. He expressed concerned that they were trying to solve something in a way that they are not solving it. He commented that he was uncomfortable passing an ordinance telling a medical doctor that he can only give a patient a 72 hour supply of some sort of medication. He commented that he has back problems and if his doctor was willing to give him a weeks worth of free samples he would give him a hug and there are a lot of people who need these drugs and there is a healthcare problem and if doctors can solve that problem for patients, he thought they should. He commented that they shouldn't be regulating doctors and should only be regulating uses. That is what the zoning code is for. He was sure there is other governing bodies that can do this far better than they can. He agreed they need to do something, but didn't think this was going to solve the problem.

Ms. Lundgren commented that healthcare practitioner dove-tails with the State Statute that was passed last year that requires the monitoring of the dispensing program. Under the State law a healthcare practitioner can administer certain types of controlled substances perhaps like the epidural drip that they can do.

Mr. Aronson interjected that this was other than a medical doctor.

Ms. Lundgren remarked that was right and would be like a nurse who has the ability to give like an epidural shot whereas a nurse cannot prescribe, but they could give....

Mr. Aronson interjected that a nurse is a healthcare practitioner, but they cannot write prescriptions for Oxycontin.

Ms. Lundgren responded no they cannot, but that wording you were looking at deals with the administration directly to a patient and wanted to keep that wording broad with the term healthcare practitioner because it dove-tails with the State Statutes.

Mr. Aronson then wanted to know if that would apply to a doctor.

Ms. Lundgren responded that it does apply to a doctor because a doctor is a healthcare practitioner and is inclusive. The point of the on-site dispensing regulation.....

Mr. Aronson interjected that he didn't think that a zoning ordinance should regulate the way the doctor operates his medical practice. He remarked that they were limited to the uses you could put to a particular premises.

Mr. Markley commented that this proposed code change is not an attempt to regulate how medical practitioners are licensed. It does not attempt to change their abilities and that would still be through their regulatory agencies. Any local business tax receipt that comes in when it is a medical use they provide their license from the respective regulation agency. He commented that we do not attempt to change anything with that. This is just recognizing within their use.

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Mr. Aronson interjected that he was not talking about licensing, but was talking about the doctor doing his job. In Section 23-110 tells the doctor what he can and cannot do in terms of prescribing treatment to his patient.

Ms. Lundgren responded that she would have to correct Mr. Aronson on that because they are not regulating what he prescribes. He can prescribe all day long, he just can't dispense at that location and that is where the land use issue comes in when you have a conflict with a doctor who is prescribing and dispensing onsite. This is a huge financial benefit to these establishments and that is where this has skyrocketed into such a huge problem with people paying cash, getting their prescription, getting their dispensation of a huge amount of drugs.

Mr. Aronson remarked that he understands that, but he believes if what they are concerned about is you don't want this co-location and the way we regulate it is that we say a medical office, because the locations of the medical offices is in the zoning location, cannot have a retail operation out of it, which would be a pharmacy, he could live with that. However, we cannot tell a doctor that he cannot give his patients drugs. The doctor makes that decision and he believed that they are going beyond what they have the ability to regulate. He is not saying that this is not a problem, but didn't know if they were going about it in the most efficient way.

Ms. Lundgren responded that she understands and goes back to the first question that was asked and which is this is the most efficient way to regulate this issue and wouldn't they be better if the State was addressing this and regulating this. Why are we in the position of doing this at the local level through our zoning code and it does seem odd and she understands that. It is because of the State of Florida's lack of regulation in this area that has put us in this situation where we are fighting to deal with it at the local ordinance level. As other cities have put these regulations into place, we would be the one without a mechanism to address these onsite dispensing clinics with the problems that are associated with them. From her perspective, she remarked that is the land use issue and when you have one of these onsite dispensing clinics and next to it you have the family dry-cleaner, and family businesses in the same plaza and people have to lock their doors like Commander Stoner was saying. The businesses can't let anyone use their bathrooms and people are afraid to come to our commercial areas and frequent our plazas because of these kinds of businesses. It will hurt the local economy and that's the land use side that this is addressing.

Mr. Aronson commented that maybe he was not understanding the ordinance because this doesn't regulate a pain clinic which doesn't have a pharmacy. So, if he was a doctor he could open up a pain clinic down the street at whatever retail center.

Ms. Lundgren responded that is correct, but when you read about these issues you will see that there are very few of the clinics that are just prescribing. They are dispensing onsite because that is the most lucrative way for them to

Mr. Aronson again interjected that if he couldn't dispense on site, so what he would do is rent a space over here and then 3 or 4 bays down if he was permitted in the zoning district to open a pharmacy then you cannot prevent a company that he owns separately from opening a pharmacy.

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Ms. Lundgren responded that's true if its assessment establishment...

Mr. Aronson asked what the definition of establishment is and that was one of his questions. He explained that he was not trying to argue, but that he was a business lawyer, but the wheels start turning when someone comes to him says this is my problem and how do you get me to legally operate. He remarked that he open Dr. Smith's pain center and down the street you open some pharmacy under a different name, which is owned by the same entity and all he would have to say is that there is a pharmacy down the street where you can go and get the prescription filled right now. Then you didn't solve the problem because if that's not co-location then we are wasting our time. We would not have helped ourselves.

Mr. Konhauzer asked why we can't change the wording to incorporate that so that we are all encompassing.

Mr. Aronson responded that he didn't think you could.

Ms. Sori remarked that you could change the wording on medical practitioner. No doctor wants to be called a medical practitioner they want to be called medical doctor.

Mr. Aronson commented that was where we get beyond our level of regulations. There has got to be a better way to get to these people. He didn't think they were accomplishing it and all they would be doing is to create is a small hurdle and they are going to jump it really quick. He wants to know the better way to deal with them.

Ms. Lundgren remarked that there would be some support for a change that would clearly explain definition of establishment for purposes of this ordinance because it was her understanding in talking with Staff is that we have administrative policy of the establishment being.....

Mr. Markley responded that this Board has already addressed and that is already a precedence set. Establishment has been determined in the City. The most recent case that some of the Board may remember was particularly on signage as to what an establishment is as far as you may have one bay that has multiple local business tax receipts, but you have to go outside in another door that would create another establishment. He expressed that he would impress heavily on the Board that this is one tool and by no means meant to be the solution to the various challenges. There are other law enforcement actions that are being pursued and there are some State actions that some of our elected officials and some of them have talked to the State Legislature to impress upon them the urgency, so this is just the one part that would be the Planning and Zoning part that this Board and the City could do as a municipal part of the solution.

Mr. Sands asked Commander Stoner that if the Board adopted this ordinance how it was going to help them enforce the laws to keep this from coming into Cooper City. He wanted to know what this code change would do to help law enforcement.

Commander Stoner responded that the way he has interpreted this is that by giving them the ability not to have these clinics operate within our City and with pharmacies down the road,

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whether we can do anything with what we have right now or not, he wasn't sure other than what they are already doing now and they will continue to do that. The idea is how we better align ourselves in the future so that we don't continue to have this problem. He said that was the really best overall broad answer as to what they are trying to do or the attorney's and what Planning and Zoning are trying to put together.

Mr. Sands commented that he heard last week that this was a major issue in Cooper City and then he started hearing arrest reports and he asked if it was a pain clinic and was told that it was not a pain clinic and that it's a pharmacy. So when they were told at the last meeting that there were no pain clinics in Cooper City, it's true, but we have a pharmacy problem right now. He expressed his concern about what they are doing is that law enforcement is doing everything they can do in trying to come up with creative solutions to this. We all know the criminals are smart. They keep figuring out another way around it and it has already been stated that they are going to figure out a way around the code. If we separate the emotional issue and the fact that this is a serious problem down here, a serious

legal issue and these people shouldn't be in our City and he agrees with all that. He commented that if we adopt this code, they would seriously restrict for instance a pediatrician who wants to distribute Adderall, so that its available for a parent who doesn't have to take that prescription and go to Walgreen's, code is going to tell that doctor that you can't do that because they are being included in this ordinance. He expressed his personal opinion that he agreed with everyone that something needs to be done about this, but he agreed with Mr. Aronson in that he didn't know that this ordinance was it. He stressed that there is a law enforcement issue and a code enforcement issue and he was concerned about the restrictiveness on the good doctors, like a pediatrician. If a Pediatric Associates wanted to come into Cooper City and they wanted to have their own pharniacy they couldn't dispense Adderall on the premises under this ordinance. He said that Pediatric Associates is a big organization and would be very careful about how they are distributing this and would not be a pain clinic that is going to be an irresponsible pharmacy. This is where his concern is at with the code.

Mr. Roper commented that pain medicine is a problem not only in Cooper City, Broward County, but nationwide and he didn't know if there any one thing that they can do. He thought they what they are doing to trying to do something that would possibly deter something that could happen in the future. Yes, there would probably be some doctors that will be upset because they are not going to be able to give out more than 72 hours worth of medicine. He didn't think they were here to make every doctor happy. He thought they were here to look at what they can do to help the many families and children who are on these drugs and they do it daily. He remarked that he has a 45 year old son that is a drug addict. He remarked that anything they can do to deter and possibly help law enforcement then he thought they were doing a great job.

Ms. Sori wanted to know if there was any chance they can delay this to one more meeting until Mr. Aronson's and Mr. Sand's concerns are addressed. They should not be regulating doctors. However, they do need to do something and agreed with Mr. Roper and any little thing they can do to help keep these people out of here so much the better. She remarked that they cannot tell doctors they can't prescribe drugs. Even if they have to get so specific in this ordinance that they say pain medication, or controlled narcotic substances and give examples of what the substances are, but you can't tell a doctor they can't give a patient medication for more than 72 hours of

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drugs. She explained that when her children were sick their doctor would give her the entire prescription. You can't stop doctors from doing that, so maybe they need to rewrite and tighten the ordinance so it meets what they are trying to do.

Mr. Konhauzer commented that he agrees with everything that has been said tonight, except the 72 hours. He explained that he just watched his mother-in-law go through 8 months of horror with cancer throughout her body and watched her in horrendous pain. He remarked that 72 hours wouldn't handle it. She was given liquid morphine, oxycodone and other types of drugs through an Oncologist who prescribed medication. A person that is 70 or 80 years old is not going to be able to get their prescriptions re-filled every four days. These are long term ailments and are not a week. Something needs to be put in this ordinance that needs to protect that, in his opinion.

Mr. Rodriguez asked when the moratorium that is in effect now expires.

Ms. Lundgren responded that the moratorium expires on April 13th, and that is why they are seeking a recommendation tonight on this ordinance. She commented that she was willing to get recommendations from the Board on changing this language, striking and/or opening up and extending that 72 hour period within this exception would certainly get recommendations tonight. Again, this is for a dispensing restriction and not a prescribing restriction. That is certainly something that is within the Board's ability to recorrnend as a change to these proposed regulations to extend that 72 hour period.

Mr. Rodriguez then asked what prevents the City from extending the moratorium.

Ms. Lundgren responded that the City could extend the moratorium up to three months, which is the limit under the moratorium ordinance.

Mr. Rodriguez asked how indefinite is that and can they keep re-extending?

Ms. Lundgren responded that it is important that it be moved along from a legal standpoint in order to preserve the integrity of the regulation. They had had six months and it has taken a good deal of time for them and for Staff to research and prepare these regulations and that is culminating what is before the Board. That is why it is recommended they should move forward with a vote for some sort of recommendation for changes to the extent that you want to see some changes made for the Commission.

Mr. Roper commented they can prescribe medicine for more than 72 hours, but they cannot give out more than 72 hours worth of pain medicine out of their office, but they can prescribe...

Mr. Konhauer interjected that a pharmacy can give 75 Oxycodone pills if it was prescribed. Several Board members said yes a pharmacy can fill a prescription for that.

Mr. Rodriguez commented that anything that gives BSO another tool, because that is all that this is and it is by far not what is going to solve this. He was in favor of and thought that any issues

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that come up they can always amend the ordinance or provide variances if it is a specific Pediatric Associates that comes in. That is not what this is for and didn't think they would get hurt by this.

Mr. Valenti asked Commander Stoner what is the basic problem with the pain clinic and is it a person that goes in there for a prescription for 250 pills and are the legitimate people that go to pain clinics and get a prescription that they just left their doctor for and does that happen.

Commander Stoner responded that he was not all that familiar with the clientele, except for the ones that he has seen and the ones that go in. These are the ones that are going in with the idea of picking up 250 pills and going back to their home State and then selling those pills.

Mr. Valenti agreed with Commander Stoner, but remarked there seems to be two issues. He didn't know of a doctor that would prescribe medicine for 250 pills or 150 pills. He commented that he may get 30 days if he gets that. He stated that he was still in favor of this ordinance because it is a tool that law enforcement can use and if it helps 5% which is better than what they have now.

Ms. McCoy commented that the problem she has with this ordinance even though she realizes the need for it just like everyone else, but it comes down to the zoning aspect of it and thinks it needs to be tightened versus permitted uses versus non-permitted uses in each one of the zoning areas. She thought that it gets all clouded up with other stuff that is in here when really from a zoning perspective and in the office category it is not a permitted use any longer. If you don't want to have a retail pharmacy in an office industrial park it is no longer a permitted use and they would eliminate the use. It doesn't matter who wants to put in an office; they would not be 2 or 3 stores down or offices down from the offender. With regard to the moratorium, she looked at all the other cities that have gone for a year under a moratorium and a lot of them haven't come back with their plans. She commented that she would like to see what the actual ordinances look like for Dania Beach and Coconut Creek and for Delray Beach. She remarked that they don't have those ordinances in front of them to judge. She referred to the definition of prescribe and believed that, not with standing that they shouldn't be regulating doctors with zoning code, but if they are going to refer to whoever is going to be dispensing there has to be a legal definition and it should either a medical doctor, a nurse practitioner, a physicians assistant, but in that respect that it is someone that can distribute those type of prescriptions for those classes of drugs. She then referred to the mentioning of the establishment and although that establishment might be a definition in the code which has quite an exhaustive list of definitions and again, she thought they were coming back to permitted uses and as a zoning Board and the permitted uses to her should be more of a factor than the overwhelming concern there are bad guys in our community and we need to stop more of them from getting here. She remarked that she agreed with Mr. Aronson's perception of zoning.

Mr. Aronson remarked that he disagrees that if they pass this they give BSO any weapons and thought they would give them a gun without any bullets. He commented

that if you read the ordinance carefully, not from a law enforcement view, but from a legal and zoning view, the Board didn't help them. He commented that he wants to help them, but this ordinance doesn't help them. In regard to all of these classified drugs are not pain drugs. Many of these classified

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thugs are other types of drugs. He expressed his concern about hamstringing legitimate doctors. He recommended that the Board table anything else.

MOTION: TO REQUEST THE COMMISSION TO EXTEND THE MORATORIUM FOR AT LEAST 90 DAYS, WHICH WILL GIVE THE P&Z BOARD AN OPPORTUNITY TO FURTHER LOOK AT THIS ORDINANCE AND TO ALSO SEE WHAT THE STATE LEGISLATURE DOES. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSSION.

Ms. Sori remarked that would give them additional time.

Ms. Lundgren commented that the session usually wraps up in May or June so it could well extend.

Ms. Sori explained that she spoke to one of our State Congressman on another issue and he told her the session was from March until the beginning of May.

Ms. Lundgren asked the Board for anything they could recommend that can be included in this ordinance and move it forward. She recommended the Board move it forward.

Ms. Sori wanted to know how they could do that when the Commission has already put it on their agenda for March 23rd. They put it on so fast they didn't give them time to really digest all of this.

Mr. Aronson remarked that Commission could pass this without their approval.

Ms. Lundgren interjected that there should be vote of a yes or no on the recommendation.

Mr. Roper reminded that Board there was a motion on the floor. He then commented that he thought everyone has given a lot of good points for them to look at. He also thought that this was a very hard package to put together relative terminology, etc. that will make everyone happy. He thought that people were also looking at this from a standpoint that what can they do to help law enforcement also and he didn't know if the Board thinks that this is every thing they could do and maybe there are some other things. Maybe this is something the Commission may want to workshop with the Planning & Zoning Board with law enforcement in and sit down and discuss this to a point that they would feel they have something that is meaningful that more people would be able to approve.

MOTION AMENDED: TO TABLE TO A FUTURE DATE. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSSION.

Mr. Rodriguez commented that he was in favor for an additional moratorium and thought that was what Mr. Aronson's motion was.

Mr. Aronson responded that was what he wanted to do, but was told that they have to act on this ordinance and his action was to table this.

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Ms. Sori wanted to know where it was written they have to act on this now.

Mr. Roper suggested that they can table this and then make a separate motion to ask that the Commission consider extending the moratorium with the possibility of having a workshop that would involve both Planning & Zoning and the Commission.

Mr. Konhauzer commented that he personally thinks they are sending the wrong issue and suggested that if they want to table this they should say why they want to table this.

Mr. Roper thought that when the Commission reads the minutes it would be quite apparent.

Mr. Aronson commented that he would re-word the motion and that he didn't like a lot of topics in one motion.

Ms. Lundgren requested that the motion was tabled to a date certain for re-advertisement.

MOTION AMENDED: TO TABLE THIS MOTION TO A DATE THAT IS CO-TERMINUS WITH THE DATE THE COMMISSION EXTENDS THE MORATORIUM. MOTION MADE BY MR. ARONSON FOR DISCUSSION.

Mr. Aronson responded no, and that he believes that this Board wants to table this and ask the Commission to extend the moratorium in order that this Board can

further look at this including having a workshop meeting scheduled. If you ask for a date certain he would not know what that date would be. He also commented that he didn't understand the critical nature of a date certain that he would have to pick out of the air. He then commented that he to wants to pass something that was relevant and helpful and didn't think they were trying to be obstructive here. Mr. Konhauzer wants to know what is relevant that they can't give to the Commission.

Mr. Roper explained that in Mr. Woods's presentation to the Commission he puts in comments and would put in some of the Planning & Zoning concerns and asked Mr. Wood how he does it.

Mr. Wood responded that what he normally does is to put the motion in his Staff Report and refers to the minutes to reflect the comments made by the Board.

Mr. Roper then asked Mr. Wood if the Commission asked him that he would give them a recap from the minutes.

Mr. Wood responded that was correct.

Mr. Roper asked Mr. Wood to give the Commission a recap prior to the time that it goes to Commission.

MOTION AMENDED AGAIN: TO TABLE AND REQUEST THAT THE COMMISSION EXTEND THE MORATORIUM 1'0 A DATE THAT WILL PERMIT THE PLANNING & ZONING BOARD TO FURTHER INVESTIGATE THE SCOPE OF THIS ORDINANCE

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INCLUDING SCHEDULING A WORKSHOP, STAFF PROVIDING THEM WITH SIMILAR ORDINANCES AND OTHER BACKGROUND MATERIAL THAT ENABLE THEM TO MAKE A REASONABLE DECISION. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS FOR DISCUSION.

Mr. Roper mentioned that they have requested that Mr. Wood to look at the minutes and put down the concerns and give that specifically to the Commission in their backup material in which this item will be on the agenda. They will have this in their backup and will be able to look at it and make a determination.

MOTION: TO TABLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES AND TO REQUEST THAT THE COMMISSION EXTEND THE MORATORIUM TO A DATE THAT WILL PERMIT THE BOARD TO FURTHER INVESTIGATE THE SCOPE OF THIS ORDINANCE INCLUDING SCHEDULING A WORKSHOP; AND BEING PROVIDED WITH SIMILAR ORDINANCES AND OTHER BACKGROUND MATERIAL. MOTION MADE BY MR. ARONSON AND SECONDED BY MR. SANDS. On roll call there were five aye votes and four no votes made by Mr. Rodriguez, Mr. Valenti, Mr. Konhauzer, and Mr. Roper. Motion was approved.

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7. NEW BUSINESS:

A. DISCUSSION FOR POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES

Mr. Wood explained that the City has been made aware by law enforcement and news reports that illegal drug use and distribution has been associated with pain management clinics which prescribe and dispense narcotic drugs on-site. The State recently passed legislation to begin addressing this concern and may propose additional legislation for a more comprehensive approach on the matter. At the October 13, 2009, City Commission meeting, the City Commission passed a moratorium on "pain management clinics" to allow review of City Code for additional regulations for medical offices and clinics which include on-site dispensing of controlled substances to address steps appropriate for rnunicipal zoning regulation.

Cuurent City Code classifies dispensing of medication as a pharmacy under the category of neighborhood retail. Medical offices and clinics are specifically defined as a use and currently could be located in the same establishment as a pharmacy. Pharmacies are currently located in Cooper City in every type of zoning district in which they are allowed with the exception of Planned Mixed Use Development (PMUD) for which the use is anticipated would be considered appropriate in the Monterra Development which has that zoning designation. Similarly, medical

office and clinic uses are dispersed City-wide. Therefore, the proposed change to Code does not alter the districts in which these uses would be permitted. The attached proposed Code change would, however, prohibit medical offices and clinics from being in the same establishment as a pharmacy dispensing controlled substances. By regulating co-location of uses of specifically defined controlled substances, grocery stores and chain drugstores which may have convenience clinics would still be permitted to prescribe and dispense-medications such as for colds and the flu. To do so the changes include:

1. Revising definitions including providing for pharmacies separate from neighborhood retail
2. Providing functional changes to the use regulation schedule and list of uses in districts
3. Adding supplemental regulation to medical office and clinic uses to restrict co-location
4. Adding supplemental regulation to pharmacies to restrict co-location
5. Revising the I-1, Light Industrial district to regulate pharmacy wholesale and warehousing activity and eliminating pharmacy as an accessory use in this district, and
6. Eliminating the provision for a pharmacy to be an accessory use in office buildings.

Mr. Wood concluded that the Planning and Zoning Board is requested to discuss and comment on the proposed Code revision. The Board's recommendation will be forwarded to the City Commission for action.

MOTION: FOR DISCUSSION MADE BY MR. SANDS AND SECONDED BY MR. KONHAUZER.

Mr. Sands wanted to know if the new code would prevent a medical office from having any type of a pharmacy. He mentioned that he has several children that are in his pre-school who are on Adderall and their doctors have pharmacies in their office. Adderall would be considered a narcotic, but for the parents they have to write a prescription and go somewhere, because that is a narcotic. For ease and convenience a lot of these particular physicians have pharmacies in their

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offices to fill those prescriptions. He thought this was more of a legal issue more than a code enforcement issue and thought that changing the code on this would provide temporary relief, but no permanent solutions. He wanted to know if a medical office Or pediatrician's office who wants to do that and would we prevent them from offering that convenience (dispensing narcotic drugs) with this new code. Mr. Wood responded yes and the limitation would be on the controlled substances or regulated drugs.

Ms. Lundgren referred to page 3, paragraph 1, last page; she explained that it prohibits on-site dispensing of identified controlled substances identified by certain sections of the Florida Statutes. She said Adderall is included as a controlled substance in those Statutory sections. She remarked that she hasn't looked at that specific issue, but believed that it is a restricted controlled substance then that would be the effect of this ordinance.

Mr. Aronson commented that like a dermatologist who customarily has a pharmacy and prescribes various dermatological products would not be restricted.

Mr. Markley remarked that as a point of clarification, the City is not aware of any current medical offices which have a local business tax receipt for a pharmacy. He was not aware of any doctor's offices that were performing that type of function.

Mr. Sands remarked that we are writing code not just for the present, but for the future. The issue is that if someone does decide to come in town such as a Pediatric office, he asked if we were throwing the baby out with the bath water because we have some pain clinics that are abusing this and this is a legal issue and not so much a code enforcement issue. Is this more of a legal enforcement issue, and referred to the Staff Report that started out that they have been made aware of news reports and by the police department. He said that his question is it best solved by them redoing the code or by re-upping what the law enforcement as opposed to code enforcement.

Ms. Sori commented that many physicians give out sa.mples including narcotic samples and what are you going to do about that. Nothing has been addressed to that issue. Many, many physicians give out samples.

Ms. Lundgren again referred to the 3rd page under sub-section (a), there are several exemptions from the prohibition on on-site dispensing and one of those is administering a controlled substance directly to a patient if the amount of the controlled substance is adequate and is not more than necessary to treat the patient during that particular treatment session or there is a one time emergency re-supply exemption.

Ms. Sori remarked that if a doctor has a patient who can't afford something they will give them bulk samples.

Ms. McCoy agreed with Ms. Sori and remarked that she has a doctor in Pembroke Pines who gave her 5 weeks of a controlled substance and she didn't turn it down, because it is expensive. She referred to Stirling Palm Plaza which is basically an office building and medical building there is a pharmacy in that center and do we consider that type of use in that office center and

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would that be prohibited, because it is an office building and would it fall under the permitted accessory uses and pharmacy has been deleted, which is under section 23-84(c) office buildings, item 2.

Mr. Markley responded that Section 23-84 is to particular accessory uses that are someone has a primary use and wanted in addition to that primary use have an accessory use as one of those four items. 'This would limit the number of accessory, secondary uses to three. Pharmacy would remain a permitted use as a primary use in that zoning district.

Ms. McCoy remarked that she was meeting with the owner's son of that center relative her professional business and she said that he had made a comment to her about Cooper City and about how that pharmacist was being harassed and asked if we have gone after that particular pharmacist.

Mr. Wood responded that he was not able to answer specific enforcement questions tonight.

Mr. Rodriguez wanted to know how many of these pain clinic facilities exist today that they would be regulating and does this code change affect them?

Mr. Wood responded that as far as we know there are none in Cooper City.

Mr. Aronson commented that he agreed with what Mr. Sands said and thought that one of the ways to proceed is as a Board if they are going to lean toward the view that Mr. Sands took, we may not need to discuss all this. He expressed that he felt he needed more insight as to why this is coming up. He thought that it seems a bit of an over reaction to a problem we don't have. It is a problem that may be somewhere in some communities, but not ours.

Ms. Lundgren explained that the issue that has prompted this code change is the proliferation of the so called pain management clinics all over Broward County. This has been coming up in numerous local governments and there have been a lot of very negative activities and effects that are associated with these clinics. Essentially what has been occurring is there are clinics that are licensed to dispense on-site these controlled substances and under Florida law it is very lenient as to the amount that can be distributed and who can be prescribed these drugs. There is no method to screen the patients who come in and claim pain and then receive medication. They can go from doctor to doctor throughout Broward County and rack up huge amounts of drugs and there has been a lot of reports and news accounts of this even extending to folks fi-om out of State like Kentucky and West Virginia who come down and they doctor shop for loads of narcotics and they take them back to their home state and purvey them in the drug market.

Mr. Aronson remarked that he understands the proliferation of these clinics, but wasn't suggesting that most of them were bad, however based on that explanation this seems more of State issue than a municipal issue. He explained that recently his wife went to a pain doctor, but that doctor doesn't dispense any narcotics at all. His wife gets epidurals and goes to a pharmacy for medication. He asked if there was a difference of a doctor at a pain clinic who prescribes a prescription that he fills at his own pharmacy versus giving someone a prescription that he fills at Walgreens or CVS. A doctor having his own pharmacy is not relevant to this issue. They are talking about something very specific that is a perceived problem about pain clinics and they are

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trying to solve it for our 8 square mile City and he didn't think that this is the way that problem gets solved.

Mr. Roper commented that many cities have passed similar legislation already. He asked Ms. Lundgren if she knew who some of those cities are and whether it is very similar in nature as to what they are discussing now.

Ms. Lundgren responded yes, and the first City that has addressed this that was having a huge problem with the pain clinics coming in and as a client of her firm is Dania Beach. They passed an ordinance last year and several other cities quickly followed that and enacted very similar regulations. She mentioned Oakland Park and Coconut Creek who have both passed moratoria and if they haven't yet adopted similar ordinances they have these exact same concepts before their Commission and are in the process of doing so. She mentioned there has also been an effort within Broward County and the County Commission has been in the process of putting this into place. She also mentioned that outside of Broward, West Palm Beach and Palm Beach County, Boca Raton have been in consideration of these regulations as well. It is really a multicounty effort at this point because there has been such a clear identification of these huge issues and the criminal effects that are creating a big problem for the adjacent businesses in the same plazas as these people pick up their drugs and they sit in the parking lot snorting and shooting them up. There are a lot of obvious concerns if you share your shopping plaza with these clinics. Mr. Sands remarked that snorting and shooting up and doctor shopping are all legal issues and are not code enforcement issues. He commented that Ms. Lundgren mentioned these other cities are considering legislation, but asked how many have actually enacted it and how many of the cities that she referred to are also represented by her law firm. He remarked that she mentioned Dania Beach. He commented that his church is in Dania Beach and compared to Cooper City it is night and day. It is a different world. He didn't even know that was a fair comparison. He said that it seems like it is a big issue, but it is not here and there is no idea what is going to happen and no idea how to react to it and are trying to write some preventative thing, but didn't know if they entirely understood what is going on with this. He again remarked that he personally didn't see this as a code enforcement issue and sees it as a law enforcement issue.

Ms. Lundgren responded that they do represent Dania Beach and Hallandale Beach on a special counsel basis and they have already enacted a moratorium and are in a process of adopting the ordinance. She said that they also represent Weston who has adopted this and Weston certainly wasn't the kind of place where you would expect to pop up either, but they wanted to take a proactive stance knowing that as more and more cities

Mr. Konhauzer interjected that he has looked at the corridors in Dania Beach off of Griffin Road and has seen many of them. They are areas like the 441 corridor that are of a lower level. He remarked that he doesn't see it here and agrees it is a problem, but commented that we have laws that protect us. He then commented that there are other ways of controlling it through the places that are distributing it by following through on that and going with the law rather than making more laws here and didn't know if that was necessary.

Ms. McCoy commented that in the past when they have looked at making changes to the zoning regulations they have also had other municipalities' codes as a guide. She mentioned Pembroke Pines, Boca Raton, Coral Springs, even Plantation and Sunrise that are considered comparable

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cities. She then commented that looking at the light industrial district and to exclude that use from the light industrial district might not be a bad idea. This says that for the wholesale and warehousing they have to have a minimum of 1,750 square and is that what is being proposed and that they are in there as long as they are doing the wholesale and warehousing and is that correct. She referred to section 23-56, light industrial.

Mr. Markley responded that the square footage is not being proposed to have any change and is existing language. The proposed change in the light industrial is the part that is underlined and is in color.

Ms. McCoy remarked that a pharmacy would not be allowed in the light industrial district.

Mr. Markley responded that it is currently as an accessory use. Again, he commented that an accessory being ancillary to another primary use.

Ms. McCoy interjected how you would make a pharmacy an ancillary to a primary use. What would be the primary use in an industrial park?

Mr. Markley remarked that as an example might be with a hospital and the primary use is the health care that they are providing but they have a pharmacy that is ancillary.

Ms. McCoy commented that we are not talking about a hospital we are talking about the light industrial specifically and Mr. Markley is saying that it is an accessory use.

Mr. Markley remarked that it would currently be permitted as an accessory use, but the proposed is that it would no longer be permitted as an accessory use as well as the additional regulation that whereas it could still be a wholesale or warehouse, but there would regulation on the controlled-substances being distributed so that someone would not be going directly to that location and being dispensed on an individual basis for the controlled substances.

Ms. McCoy asked how the rest of the Board would feel about addressing just the light industrial where they know they have a loop hole.

Mr. Aronson commented as they sit here they are not comfortable with this ordinance. He then remarked that normally when we are discussing a proposed modification to an ordinance they have some discussion about it in advance of seeing the actual proposed ordinance and they get some insight as to why and how and what they want to do. This one just popped up and it seems like it became a critical issue that they need to get passed. He was not ready to pass it unless Staff was to tell him that failure to pass it now will create a problem that they can't rectify if they pass it later.

Mr. Roper thought the Commission was trying to be pro-active and it was the Commission that wanted to bring this before the Planning & Zoning Board. He remarked that if there are enough Board members that feel like they need additional information to be able to vote on this issue, he suggested they consider tabling this until they do have more information such as from the other cities that have passed something similar or are in the process of passing or have passed something similar and then they can readdress this issue.

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Mr. Rodriguez commented that he is comfortable with this ordinance and remarked that you have other cities that are making moves and what is going to happen is that the people that are doing this are going to come to the city that doesn't have something in place. He explained that he was all for this ordinance and didn't care if there was nothing happening now, if we are going to prevent something he was okay. He agreed that it was a law enforcement issue, but so is liquor stores and strip bars and everything else and that is why there are ordinances because you want them out of a certain area and that is what he wants here. He commented that we are susceptible too... the high school, drugs, they are all over the place and people are going to converge here if they don't do something and he thinks they should do something. He asked if someone could give him a good reason for the down side of the ordinance and he sees the pros and doesn't see the cons.

Mr. Aronson commented that the down side is there may be some very ethical doctors who choose to have a pain clinic or any kind of medical practice where they want to have a pharmacy and were would be preventing them for that and they may want to do it for valid medical or business reasons and we have said no.

Mr. Rodriguez responded that we can overcome that and we don't have that now. If that is what they want to do in their own office he thought there was something that could be done to address that.

Mr. Aronson thought that most of the Board would like to take a better look at this issue.

Mr. Roper explained that he would like the Board to readdress this issue rather than seeing it die and feels that this issue is very important.

Ms. McCoy commented that when it comes back to the Board, she would want to see other cities ordinances and that is how they have been able to evaluate issues in the past.

Ms. Lundgren responded that she understands that and if the direction of the Board would be to table it, then she would put together a more comprehensive packet with other cities ordinances and more of a broad account of what this issue really entails so that they will be fully prepared for the next discussion. She then reiterated that this issue may not have been on the radar, but this has been coming up more and more in cities that they represent and with cities she has been tracking outside of the cities they deal with regularly, like Oakland Park and Plantation, who are represented by another firm who have been working on this issue and consulting across the county to other attorneys and planners about how to get a grip on this issue. It has been something she feels that need to be proactively addressed. She said that she wants to make sure that the City is proactively protected in that situation.

MOTION: TO TABLE UNTIL THE NEXT P&Z BOARD MEETING WITH THE CAVEAT THAT WE HAVE THE NECESSARY INFORMATION. MOTION MADE BY MR. SANDS AND SECONDED BY MS. MCCOY.

Ms. Sori thought that physicians giving out bulk samples should be also considered.
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Mr. Roper thought they should leave it up to the attorney and her office to bring back to the Board what they are asking for.

Ms. Lundgren commented that she will work with Staff to put a packet together for the next meeting.

Mr. Aronson mentioned that the State Legislature meets in a few weeks and asked Ms. Lundgren to let them know if this issue was on their agenda also.

Ms. Lundgren responded that there was a bill passed last year that requires monitoring of pharmacies with regard to the prescription of these substances and the dispensing of these substances however, that bill was an unfunded mandate because the Department of Health does not have the funds to implement this technological program and it is clear there is very little immediate effect from this 2009 Legislation and even though there was legislation passed this problem is still going full blast.

Mr. Aronson commented that it seems odd to have a zoning law to regulate a legal or criminal activity.

MOTION: TO TABLE POSSIBLE CHANGES TO AMEND SECTION 21-8 AND CHAPTER 23, OF THE MUNICIPAL CODE OF ORDINANCES RELATIVE PHARMACIES UNTIL THE NEXT P&Z BOARD MEETING WITH THE CAVEAT THAT THE BOARD HAS THE NECESSARY INFORMATION REQUESTED. MOTION MADE BY MR. SANDS AND SECONDED BY MS. MCCOY. There were all ayes on roll call vote. Motion was approved.

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Land Development Regulations Adopted By Local Governments

ORDINANCE NO. 2009-009

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, AMENDING ITS LAND DEVELOPMENT REGULATIONS TO PROHIBIT ON-SITE DISPENSING OF CONTROLLED SUBSTANCES BY PAIN MANAGEMENT CLINICS, TO THE EXTENT PERMITTED BY LAW; PROVIDING DEFINITIONS; PROVIDING SUPPLEMENTAL REGULATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; FURTHER, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Dania Beach (the "City") finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the Miami Herald, Sun Sentinel and other news media, such as the Lexington Herald Leader, have published numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled

substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at pain management clinics, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, the City Commission approved a Resolution on April 27, 2009 notifying the public that changes to its zoning code regarding medical offices that offer on-site dispensing of narcotic drugs was under review; and

WHEREAS, during an advertised public hearing on June 17, 2009, the Planning and Zoning Board, sitting as the City's Local Planning Agency, reviewed this Ordinance and recommended approval to the City Commission; and

WHEREAS, following proper notice to the public and after having received input and participation by interested members of the public and staff, and having considered the recommendation of the Planning and Zoning Board, the City Commission finds this Ordinance consistent with its Comprehensive Plan, as well as Florida and federal law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA:

Section 1. That the preceding "Whereas" clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

2 ORDINANCE #2009-009

Section 2. That the City Commission amends Article 2, Section 2.10, entitled "Definitions" of its Land Development Regulations to alter or create the following definitions:

Adult residential care facility. Any housing facility for one hundred (100) or more elderly residents situated on property which has direct access to and is adjacent to either a minor arterial containing at least one hundred ten (110) feet of right-of-way or a principal arterial as designated on Broward County Trafficways Plan, which facility contains units with no more than one sleeping room regardless of the number of accessory rooms including living rooms and bathrooms; and contains a central dining facility which serves at least one full meal per day; and provides central housekeeping services to its residents no less than weekly; and employs a fulltime registered nurse on call to the residents; and provides planned activities, which activities may include, but are not limited to, social, educational and recreational activities; and may provide on-site dispensing of drugs under the supervision and control of a licensed physician as an accessory use.

dr ***** **

Drug store shall mean a retail pharmacy, with or without a drive lane, unless otherwise specified in this Code.

Office, medical shall mean a facility providing services to the public by physicians, dentists, surgeons, chiropractors, pharmacists, osteopaths, physical therapists, nurses, acupuncturists, podiatrists, optometrists, psychiatrists, or others who are duly licensed to practice their respective professions in the State of Florida., as well as others, including but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner. Retail pharmacies staffed by pharmacists that sell prescription drugs, nonprescription drugs or both and other retail goods for sale to the public,

are not medical offices. Offices for social workers and mental health counselors are not medical offices. Pain management clinics, as defined in this provision, are medical offices.

Pharmacy, retail shall mean a retail establishment primarily offering goods for retail sale and onsite dispensing of prescription drugs, non-prescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, etc.

Pain management clinic shall mean a type of medical office providing a variety of personal services by an on-site physician who is currently licensed by either the Florida Board of Medicine or Board of Osteopathic Medicine and his or her staff, which, individually or collectively, are intended to reduce or manage pain.

3 ORDINANCE #2009-009

Substance abuse and rehabilitation centers shall mean a type of medical office established to aid persons affected by excessive or illegal use of drugs, narcotics or other hallucinatory substances, not including alcohol, who have developed a dependency on such substances, including but not limited to methadone maintenance facilities, and outpatient rehabilitation facilities.

Section 3. Article 6, entitled "Supplementary Use Regulations," is amended to create

Section 6.66, entitled "Pain Management Clinics," to read as follows:

Sec. 6.66. Pain Management Clinics.

(a) Applicability. Pain management clinics shall be subject to the following supplemental regulations:

(1) On-site dispensing of controlled substances that are identified in Schedule III, or rv in Sections 893.03, 893.035 or 893.036. Florida Statutes, unless otherwise expressly permitted by statutory or general law, is prohibited.

(2) Any parking demand created by a pain management clinic shall not exceed the supply of parking spaces legally available within the shared guest or visitor parking areas allocated on the site as required by Section 6.20 of this Code. An applicant may be required to demonstrate that on-site traffic flow and parking will be sufficient to accommodate parking demands generated by the pain management clinic based on a current traffic and parking study prepared by a certified professional, if requested by the City.

(b) Nonconforming Uses. Any application for a Certificate of Use for a business operating as a pain management clinic prior to April 28, 2009 shall be subject to zoning regulations in effect prior to the effective date of this Ordinance. Any such clinic legally in existence prior to the effective date of this Ordinance, but now in violation of its provisions, shall be considered a legal nonconforming use.

(c) Enforcement. Enforcement of these supplemental regulations shall be as provided by law.

Section 4. Section 10.15, entitled "Zoning Relief Procedures" is created to read as follows:

Section 10.15. Zoning relief procedures. In order to address possible unintended violations of federal and state laws, subsequent to implementation of this Code or its related rules, policies, and procedures in advance of costly litigation, zoning relief may be granted pursuant to this section.

4 ORDINANCE #2009-009

(1) Application. A person or entity shall request relief under this Section prior to filing a lawsuit, by completing a Zoning Relief Request form, which is available from the City's Community Development Division ("CDD"). The form shall contain such questions and requests for information as are necessary for evaluating the relief requested.

(2) Notice. The City shall display a notice in the City's public notice bulletin board and shall maintain copies available for review in the Community Development Division and the City Clerk's Office. The notice shall advise the public that a request for zoning relief under a federal or state law is pending. The location, date and time of the applicable public hearing shall be included in the notice. Notice shall also be provided to property owners within 300 feet, if the request for relief is site specific.

(3) Hearing and determination. The City Commission shall have the authority to consider and act on requests for zoning relief submitted to the Community Development Division. A public hearing shall be held within seventy five (75) days of receipt by the City of the request for relief at a regular or special City Commission meeting. During the public hearing, the City Commission shall solicit comment and information from the public and shall decide whether to grant the requested relief. A written determination shall be issued by resolution no later than seven (7) days after the conclusion of the public hearing. The determination may: (a) grant the relief requested. (b) grant a portion of the request and deny a portion of the request, or impose conditions upon the grant of the request, or (c) deny the request. Any determination denying the requested relief shall be final, in writing, and shall state the reasons the relief was denied. The final written determination shall be sent to the requesting party by certified mail, return receipt requested.

(4) Additional information. If necessary, prior to the public hearing, the City may request additional information from the requesting party, specifying in sufficient detail what information is required. In the event a request for additional information is made to the requesting party by the City, the seventy-five (75) day time period to schedule a public hearing shall be extended to ninety (90) days to include the time necessary to seek and review the additional information. The requesting party shall have fifteen (15) days after the date the information is requested to provide the needed information. If the requesting party fails to timely respond with the requested additional information, the City shall notify the requesting party and proceed with scheduling a public hearing and issuing its final written determination regarding the relief requested as required in (3).

(5) Criteria, In determining whether the zoning relief request shall be granted or denied, the applicant shall be required to establish:

- (a) The applicant is a potential claimant under a federal or state law; and
- (b) The applicant believes in good faith that the City through implementation of its zoning code has intentionally or unintentionally violated federal or state law for the reasons

stated in the zoning relief request which shall be identified.

5 ORDINANCE #2009-009

(6) Exhaustion required. Completion of the zoning relief procedures shall be a supplement to and not a substitute for any other pre-litigation dispute resolution processes available by law to the City or the applicant. Completion of the zoning relief procedures shall evidence the exhaustion of all administrative remedies available from the City.

(7) Fees. A fee as deemed appropriate by the City Commission shall be imposed as provided by the City Commission by resolution. The fee is intended to defray administrative costs incurred to review the request including advertising costs. The City shall have no obligation to pay a requesting party's attorney fees or costs in connection with the request for zoning relief.

(8) Effect while pending. While an application for zoning relief or appeal of a determination of same is pending before the City, the City will not enforce the subject zoning ordinance, rules, policies, and procedures against the property owner, except the City may seek injunctive relief if an imminent threat to the health, safety and welfare of the public is present.

Section 5. Section 6.1 6(b) (7) containing standards for home occupations shall be amended to read as follows:

(b) Standards: A home occupation is allowable as an accessory use in a bona fide dwelling unit in any residential area. All provisions of this Code pertaining to residential uses shall be met. In addition, all of the following standards shall apply:

(7) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the nonfamily members off the lot, if the occupation is conducted in other than a single-family residence, or outside the dwelling unit if conducted in other than a single-family residence. There shall be no storage of narcotic drugs, or hazardous or toxic materials for use in the home occupation. In the case of electrical interference, no equipment or process shall be used which creates visual or audible

interference in any radio or television receivers off the premises, or causes fluctuation in fine voltage [to] the premises.

Section 6. Section 6.16(d) shall be amended to read as follows:

(d) Home offices, excluding medical; ~~and~~ ~~and~~ offices and counseling services, are permitted, provided that no transactions or meetings are made in person on the premises.

Section 7. Section 16.20 containing permitted uses in the Industrial-Research-Office (IRO) District shall be amended to read as follows:

6 ORDINANCE #2009-009

16.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one or more of the following specified uses:

(d) Office uses, excluding medical offices.

Section 8. Section 16.30 containing prohibited uses in the Industrial-Research-Office (IRO) District shall be amended to read as follows:

16.30. Prohibited uses.

The permitted enumerated uses in section 16.20 above shall not be construed to include any of the following, which are indicated for emphasis and clarification:

(w) Medical offices. pharmacies (retail and compounding)

Section 9. Section 18.20 containing permitted uses in the Industrial-Research-Office Marine (IROM) District shall be amended to read as follows:

18.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one (1) or more of the following specified uses:

(d) Offices (excluding medical offices), banks, and savings and loans.

Section 10. Section 18.30 containing prohibited uses in the Industrial-Research-Office Marine (IROM) District shall be amended to read as follows:

7 ORDINANCE #2009-009

18.30. Prohibited uses.

The permitted enumerated uses in section 18.20 above shall not be construed to include any of the following prohibited uses, which are indicated for emphasis and clarification:

(gg) Medical offices.

Section 11. Section 19.20 containing permitted uses in the Residential Office (RO) District shall be amended to read as follows:

19.20. Permitted uses.

No building, structure, land, water, or part thereof, shall be erected, altered, or used, nor shall the premises be used in whole or part for other than one (1) or more of the following specified uses:

(a) General office, excluding medical or dental offices.

(b) Single-family dwelling units.

(c) Any use that is accessory or customarily incidental to and located upon the same lot occupied by the main use.

Section 12. Section 21.18, containing a table of uses permitted, prohibited, special condition and special exception uses in the Downtown Transit-Oriented Development (TOD) District, East Dania Beach Boulevard Transit Oriented Corridor (TOC-1) District, and the South Federal Highway Transit Oriented Corridor (TOC-2) District, shall be amended to read as follows:

21.18. Use table.

Table F-1 below shows the list of permitted, prohibited, special condition and special exception uses in each of the three (3) zoning districts.

Permitted Use Prohibited Use

SC Special Condition Use SE Special Exception Use

Table F-1. Table of Permitted, Prohibited, Special Condition and Special Exception Uses

8

ORDINANCE #2009-009

Use Zoning District

TOD	TOC4	TOC-2			
District	Distlict	District			
Medical offices, excluding pain management clinics	Y	Y	Y		

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Retail sales within an enclosed building, including grocery stores, drug store (no drive-through), caterers, wine shops, appliances, carpet and floor coverings, home furnishings, office supplies, sporting goods, electronics, photographic equipment, jewelry, art, crafts, apparel, hardware, paint, wallpaper, floor coverings, lighting, florist shop, pharmacy, and antique stores

Section 13. Section 27.40 containing prohibited uses in the Industrial-General (IG) District shall be amended to read as follows:

27.40. Prohibited uses.

The permitted uses enumerated above shall not be construed to include any of the following prohibited uses, which are indicated for emphasis and clarification:

(w) Medical offices.

Section 14. That all ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with this Ordinance are repealed to the extent of such conflict.

Section 15. That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

9 ORDINANCE #2009-009

Section 16. That this Ordinance shall be effective on adoption on second reading.

PASSED on first reading on June 23, 2009.

PASSED AND ADOPTED on second reading on July 28, 2009.

ANNE CASTRO MAYOR-COMMISSIONER ATTEST:

LOUISE STILSON, CMC CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

THOMAS J. ANSBRO CITY ATTORNEY

10 ORDINANCE #2009-009

ORDINANCE NO. 50-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 21, 2009 and voted 7 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE 'CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended to read as follows:

BUSINESS OFFICE Any commercial activity conducted primarily in an office, which does not involve the sale of commodities or goods on the premises. This definition does not include a Medical Office.

MEDICAL OFFICE -., □ .Men a f.e

surgeons. chiropractors, osteopaths, physical therapists. nurses, acupuncturists. podiatrists, optometrists. psychiatrists (who are also, known as health care practitioners) or others who are duly licensed to practice their respective professions in the State of Florida, a □ . - □ , in _ □ but not limited to technicians and assistants, who are acting under the supervision and control of a licensed health care practitioner.

accessory services such as photo processing. eyeglass care. etc.

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ORD. NO. 50-09

PROFESSIONAL OFFICES includes those vocations in which professed attainments in special knowledge are practiced, as distinguished from mere skills, and shall be limited to those professions so classified by the Laws of Florida, and which are conducted as professions and not as a trade or other business. PROFESSIONAL OFFICES do not include offices for the treatment of animals on the premises. This definition does not include a Medical Office.

Section 3. That Section 4.3.3, "Special Requirements for Specific Uses", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended by enacting Subsection 4.3.3 (LILL), "Medical Offices", to read as follows: (LILL) Medical Offices:

(1) Applicability. Medical Offices shall be subject to the following;

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or IV in Sections 893.0. 893.035 or 893.036. Florida Statutes. is prohibited.

unless otherwise established by ordinance. This ordinance shall be effective upon its adoption.

directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(ii) A pharmacist or health care practitioner when administering a controlled substance, to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state, A health care practitioner when administering a controlled substance in the

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(iv) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
health care practitioner e-time 72-hour emergency
stance a patient.

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[] regarding denial of variance regarding Medical Offices shall be appealed to the Civ Commission, The applicant shall follow the procedures and requirements set forth. in Section 2.4.7(E). In addition to the requirements listed in Section 2.4.7(E) the applicant shall file

(a) If the applicant is a potential claimant under a federal or state law: and
(1) That the applicant believe in violation of the ordinance allegedly violated shall be identified.

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ORD. NO. 50-09

Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading.

PASSE/IA...4 _ND ADOPTED in regular session on second and final reading on this the day of [] 2009.

MAYO
ATTEST
'City Clerk
First Reading Second Reading
4 ORD. NO. 50-09

Page 1 of 1
MEMORANDUM

TO: Mayor and City Commissioners
FROM: David T. Harden, City Manager
DATE: October 13, 2009
SUBJECT: AGENDA ITEM 10.E. - REGULAR COMMISSION MEETING OF OCTOBER 20, 2009
ORDINANCE NO. 50-09 (SECOND READING/SECOND PUBLIC HEARING)

rrEm BgFORE COMMISSION
This ordinance is before Commission for second reading and second public hearing to consider a city initiated amendment to the Land Development Regulations (LDR) Section 4.3.3, "Special Requirements for Specific Uses", by enacting Subsection (LLLL), "Medical Offices", to provide clarification regarding dispensing of

narcotic drugs, and amending Appendix "A", to provide for definitions related to the regulation of medical offices.

BACKGROUND

At the first reading on October 6, 2009, the Commission passed Ordinance No. 50-09.

RECOMMENDATION

Recommend approval of Ordinance No. 50-09 on second and final reading.

<http://miweb001/Agendas/Bluesheet.aspx?ItemID=2726&MeetingID=222> 10/21/2009

ORDINANCE NO. 50-09

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH, BY AMENDING SECTION 43.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION (L), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" TO PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES; PROVIDING A SAVING CLAUSE, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, the City of Delray Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and

WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical facilities, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on September 21, 2009 and voted 7 to 0 to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein

Section 2. That Appendix "A", "Definitions", of the Land Development Regulations of the City of Delray Beach, be and the same is hereby amended to read as follows: BUSINESS OFFICE Any commercial activity conducted primarily in an office, which does not involve the sale of commodities or goods on the premises. This definition does not include a medical office.

,MEDICAL QUICE,
,surgeons chirgpractors, osteopaths. physical thezapists, nurses. acupunctudsts
podiatrist' s, optometrists. psyr,..hiatrists. (who are also know as health care
practitioners) or others who are duly *eased to practice their nespe&tia
professions in the State of Floricki, as v.ell as others. including
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licensed health care practitioner.

PHARMACY shall mean a retail establishn2ent primarily offering goods far retail
sale and on-site

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ORD. NO. 50-09

PROFESSIONAL OFFICES includes those vocations in which ixofessed attainrrients in
special knowledge are practiced, as disiingushed from mere skills, and shall be
limited to those professions so classified by the Laws of Florida, and which are
conduct-ed as professions and not as a trade or other business. PROFESSIONAL
OFFICES do not include offices for the troatment of animals on the premises. This
definition does not include a Medical Qffice.
&ction,a. 'That Section 4.3.3, "Special Requirements for Specific Uses",of the Land
Dewlopment Regulations of the City of Delray Beach, be and the same is hereby
amended by ena.cting Subsection 4.3.3 (LLLL), "Medical Offices", to read as
follows:

(LLLL) IVIeclical Offices:

a) Applicability. Medical Offos shall be subject to the following
a On-site

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substance to a patient or resident receiving care as a patient at a ho .
surgical center, hospice, or intermediate care f4gllity for the developmentally
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emergency room of a bcensed hospital.

(iv) A bealtb.. care pr-titioner when 4chministering or disperisinga controlled
substance to a person under the age of 16.

fv) A health care practitioner when dispensing a one-time. 72-hour ernerwricy
resupply of a controlled substance to a patient.

□2.) _Appeal. &appeal from an administrative determination pr board wtion,
excluding the

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Theligaittall follow the procedtres and requirernants set forth in Section 2.4,7(P).
In addition the f

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(a) If the applicant is a potential claimant under a federal or state law; and
lb) That the applicant believes in good faith that the City through implementation
of this section has intentionally or unintentionally violated federal or state law.
The law(s) the City has allegedly violated shall be identified
or IV in Sections 893.03, 89 _,035 or 893.036. Florida Statutes, is prohlited.
unless otherwise expresslypermitted by statutory or general law. Tbe following are
exerrqa from this prohibition:

(i) A health care practitioner when admidstering a contolled substance directly to
a patient if the amount Qf the controlled substance is adequate to treat the
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3 ORD, NO. 50-09

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Section 4. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. That all ordinances or parts of ordinances in conflict hereafter, and the same are hereby repealed.

Section 6. That this ordinance shall become effective immediately upon its passage at a second and final reading.

PASSED AND ADOPTED In regular session on second and final reading on this the day of , 2009.

CITY CLERK

City Clerk

First Reading

Second Reading

4 ORD. NO. 50-09

Page 1 of 2

MEMORANDUM

TO: Mayor and City Commissioners

FROM: Mark McDonnell, AICP, Asst. Director Planning and Zoning Paul Dorling, AICP, Director Planning and Zoning

THROUGH: City Manager

DATE: October 1, 2009

SUBJECT: AGENDA ITEM 10.C. - REGULAR COMMISSION MEETING OF OCTOBER 6, 2009

ADMINISTRATIVE FIRST READING/FIRST PUBLIC HEARING

ITEM BEFORE COMMISSION

Consideration of a city-initiated amendment to the Land Development Regulations (LDRs) that will provide a new definition for "Medical Offices" and that includes Special Requirements that regulate medical offices dispensing controlled substances.

BACKGROUND

Medical Office uses are allowed in various zoning districts within the City, including General Commercial, Central Business District, Planned Office Center, Professional and Office District, Planned Commercial Center, and the Mixed Residential Office and Commercial District. Normal operations and expectations of medical office uses include examinations by doctors and, should prescriptions be required, they would be filled off-site at a local pharmacy. Recently, "pain management clinics" have been established which provide not only the prescriptions, but also fill the prescriptions on-site.

Following are highlights of the proposed ordinance:

1. The ordinance introduces a new definition for Medical Office, which includes services normally associated with medical offices (examinations and prescribing of medicines).
2. Clarifies that the existing definitions of Professional Offices and Business Office do not include Medical Offices.
3. Special Requirements are added for Medical Offices that prohibit on-site dispensing of controlled substances identified in Schedule II, III or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes except as follows:

□ A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

□ A pharmacist or health care practitioner when administering a controlled substance to a patient or

<http://miweb001/Agendas/Bluesheet.aspx?ItemID=2688&MeetingID=220> 10/13/2009

Page 2 of 2

resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.

A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.

A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

A health care practitioner when dispensing a one-time, 72-hour emergency re, supply of a controlled substance to a patient.

4. A relief option (appeal process).

REVIEW BY OTHERS

The text amendment was considered by the Planning and Zoning Board on September 21, 2009. The Board unanimously recommended approval on a 7 to 0 vote, by adopting the findings of fact and law contained in the staff report and finding that the amendment is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations. They conditioned their recommendation to require that the definition of "dispensing" be clarified. This has been achieved through an expanded exceptions area as noted above.

The Downtown Development Authority (DDA) reviewed the ordinance at their meeting on September 21, 2009 and recommended approval with the following conditions:

That the City seeks the opinion of the Attorney General of the legality of this ordinance.

That the City contacts the legislative delegation and recommends state-wide legislation.

That the City explores the possibility to make this a nuisance activity (or some other prohibition) so that it is strengthened and not merely a matter of zoning.

The Community Redevelopment Agency (CRA) reviewed the ordinance at their meeting on September 24, 2009 and did not support the amendment They questioned the legality of regulating trade in this way and the basis for doing the amendment (i.e. newspaper articles, etc.).

The Pineapple Grove Main Street committee will review the ordinance at their meeting on October 7, 2009 and the West Atlantic Redevelopment Coalition will review the ordinance at their meeting on October 14, 2009. The recommendations of those Boards will be presented at second reading.

R ECOMMENDATION

By motion, approve Ordinance No. 50-09 on first reading for a city-initiated amendment to the Land Development Regulations, by adopting the findings of fact and law contained in the staff report and finding that the amendment is consistent with the Comprehensive Plan and meets criteria set forth in Section 2.4.5(M) of the Land Development Regulations.

<http://miweb001/Agendas/Bluesheet.aspx?ItemID=---2688&MeetingID=---22010/13/2009>

PLANNING AND; ZONING: BOARQ; b, STAFF, REPORT

MEETING DATE: SEPTEMBER 21, 2009 AGENDA NO: IV.C.

AGENDA ITEM: CONSIDERATION OF A CITY-INITIATED AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS (LDR), BY AMENDING SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES", BY ENACTING SUBSECTION- (LLLL), "MEDICAL OFFICES", TO PROVIDE FOR CLARIFICATION REGARDING THE DISPENSING OF NARCOTIC DRUGS; AMENDING APPENDIX "A" 1'0 PROVIDE FOR DEFINITIONS RELATED TO THE REGULATION OF MEDICAL OFFICES.

JTEMIBEF1145:4THEiBtaRD'T

The item before the Board is to make a recommendation to the City Commission regarding a cityinitiated amendment to Land Development Regulations (LDRs) that provides a new definition for "Medical Offices" and includes Special Requirements that prohibits medical offices from dispensing controlled substances.

Pursuant to Section 1.1.6, an amendment to the text of the Land Development Regulations may not be made until a recommendation is obtained from the Planning and Zoning Board.

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The City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities. There has also been an increase in local advertising for pain management clinics, including references to drugs sold on-site in alternative weekly newspapers, and also on fliers left at bus benches and on billboards. Also, several South Florida pain management clinics have

been associated with a "pipeline" of drug trafficking that has led to illegal drug use in other states, such as Kentucky, West Virginia and Ohio, according to recent newspaper articles. If located within the City, these types of uses would currently fall under Medical Office use.

Medical Office uses are allowed in various zoning districts within the City, including General Commercial, Central Business District, Planned Office Center, Professional and Office District, Planned Commercial Center, and the Mixed Residential Office and Commercial District. Normal operations and expectations of this medical office use include examinations by doctors and, should prescriptions be required, they would be written and filled off-site at a local pharmacy. The "pain management clinics" provide not only the prescription, but also fill the prescription on-site.

Following are highlights of the proposed ordinance:

□ The ordinance introduces a new definition for Medical Office, which includes services normally associated with medical offices (examinations and prescribing of medicines) and will prohibit dispensing of specific medicines at the office.

□ Clarifies that the existing definitions of Professional Offices and Business Office do not include Medical Offices.

Planning and Zoning Board Meeting, September 21, 2009 ,LDR Amendment □ Pain Management Clinics

□ Special Requirements are added for Medical Offices that prohibit on-site dispensing of controlled substances identified in Schedule II, III or IV in Sections 893.03, 893.035 or 893.036, Florida Statutes.

□ A relief option (appeal process) is added in the proposed ordinance.

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Comprehensive Plan Conformance

LDR Section 2.4.5(M) (5) (Findings) requires that the City Commission make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan. A thorough review of the Comprehensive Plan was conducted and the following applicable objective and policy are identified:

Future Land Use Element Objective A-2

Reduce, and eventually eliminate, uses which are inconsistent with predominant adjacent land uses, and to insure compatibility of future development.

Policy A-2.3 Development of remaining vacant properties shall occur in a manner which is consistent with and complementary to adjacent development regardless of zoning designations. This policy shall be implemented through the review process associated with platting and site plans.

Courtesy Notices

Courtesy notices were provided to the following homeowner and civic associations:

□ Neighborhood Advisory Council

The following advisory boards will review the proposed amendment and their recommendations will be forwarded to the Planning and Zoning Board and/or City Commission, as follows:

The Downtown Development Authority will review the ordinance at their meeting on September 21, 2009.

The Community Redevelopment Area will review the ordinance at their meeting on September 24, 2009.

The Pineapple Grove Main Street committee will review the ordinance at their meeting on October 7, 2009.

The West Atlantic Redevelopment Coalition will review the ordinance at their meeting on October 14, 2009.

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Planning and Zoning Board Meeting, September 21, 2009 LDR Amendment □ Pain Management Clinics

rALTERNATIVrACTIONeTr, '4;?1 "'Vfl

A. Continue with direction.

B. Move a recommendation of approval to the City Commission of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A"

to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M)

- C. Move a recommendation of denial to the City Commission of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A" to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is inconsistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Section 2.4.5(M) (motion to be made in the affirmative).

'Ygoiti4*.RECOMMENDEIAPTION440044FOTtAtk;I:f

Recommend approval of the amendment to Land Development Regulations, Section 4.3.3, "Special Requirements for Specific Uses", by enacting subsection (LLLL), "Medical Offices", to provide for clarification regarding the dispensing of narcotic drugs; amending Appendix "A" to provide for definitions related to medical offices, professional offices, business office and pharmacy, by adopting the findings of fact and law contained in the staff report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

Attachment: Proposed ordinance

3

ORDINANCE NO. 2009-

AN ORDINANCE OF THE are OF WESTON, FLORIDA, AMENDING CHAPTER 12 "DEFINITIONS" TO CREATE A DEFINITION OF "PAIN MANAGEMENT CLINIC;" CREATING SECTION 158.59.1 □PAIN MANAGEMENT CLINICS," TO PROHIBIT ONSITE DISPENSING OF CONTROLLED SUBSTANCES BY PAIN MANAGEMENT CLINICS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, First, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, Second, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, Third, in the absence of state regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, Fourth, as such, the City Commission finds it necessary to prohibit a pain management clinic from dispensing onsite controlled substances; and

WHEREAS, Fifth, the City Commission, in its capacity as the Local Planning Agency, has reviewed the Ordinance and recommends approval; and

WHEREAS, Sixth, the City Commission finds that this Ordinance is in the best interest and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Weston, Florida:

Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent and factual findings underlying this Ordinance.

Section 2. Recommendation of Approval by the Local Planning Agency.

The City Commission, in its capacity as the Local Planning Agency, has reviewed the proposed Ordinance and recommends approval.

Section 3. Amendment to Chapter 12.

Chapter 12, "Definitions," of the Code of Ordinances of the City of Weston, is amended to read as follows:

□ 12.01 DEFINITIONS.

(A) General rule. Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

Coding: underlined words are additions to existing text, sterielHtireugh words are deletions from existing text, shaded text reflects changes made from First Reading.

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#44806 v1 □ Ordinance No. 2009- Page 1 of 3 First Reading Version

(B) Definitions. For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PAIN MANAGEMENT CLINIC. A type of medical office providing a variety of personal services by an on-site physician who is currently licensed by either the Florida Board of Medicine or Board of Osteopathic Medicine and his or her staff, which, individually, or collectively, are intended to reduce or manage pain, Section 4. Amendment to Chapter 158.

Chapter 158, "Zoning," of the Code of Ordinances of the City of Weston, is amended to read as follows:

□ 158.59.1 PAIN MANAGEMENT CLINICS.

Pain Management Clinics are prohibited from on-site dispensing of controlled substances that are identified in Schedules II, III, or IV in Sections 893.03, 893.035 or 893.0355, Florida Statutes, unless otherwise expressly permitted by law. Section 5. Codification.

It is the intention of the City Commission that the provisions of this Ordinance become and be made part of the City Code, and that the Sections of this Ordinance and Code may be renumbered or relettered and the word "ordinance" may be changed to 'section' or such other appropriate word or phrase to accomplish such intentions. Section 6. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 7. Conflict

That all Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

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Section 8. Ef-fective Date.

This Ordinance shall be effective upon passage and adoption.

PASSED ON FIRST READING November 16, 2009.

PASSED AND ADOPTED ON SECOND READING , 2009.

CITY COMMISSION
CITY OF WESTON, FLORIDA

By Eric M. Hersh, tviayor

ATTEST:

Patricia A. Bates, City Clerk Approved as to form and legality
for the use of and reliance by the City of Weston only:

Jamie Alan Cole, City Attorney

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Roll Call:

Commissioner Stermer Commissioner Henriksson Commissioner Chermak Commissioner
Gomez Mayor Hersh

#44806 v1 Ordinance No. 2009- First Reading Version

Page 3 of 3

Meeting Date: March 9, 2010 Agenda Item

REQUESTED COMMISSION ACTION:

Memorandum 10-048

Presentation

Consent Ordinance Resolution Consideration/

Discussion

SHORT TITLE AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF
ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY CREATING A NEW SECTION
155.063, "DISPENSING CONTROLLED SUBSTANCES" TO PROVIDE FOR REGULATIONS RELATING TO
THE DISPENSING OF CONTROLLED SUBSTANCES; AND BY CREATING A NEW SECTION 155.029,
"REASONABLE ACCOMMODATION," TO PROVIDE PROCEDURES FOR THE ACCOMMODATION OF PERSONS
WITH DISABILITIES.

Summary of Purpose and Why: -

The proposed ordinance regulates the establishment of pain clinics by prohibiting
in medical offices, business offices or professional offices within every zoning
districts the on site "dispensing of controlled substances, " which are identified
in Schedule II, III or IV in Section 893.03, 893.035 or 893.036 Florida Statutes.
Certain exemptions are allowed, which generally pertain to health care practitioner
administering controlled substances. The ordinance also establishes a section on
reasonable accommodations for "disabled individuals."

(1) Origin of request for this action: City Commission

(2) Primary staff contact: Robin M. Bird, Development Services Director

(3) Expiration of contract, if applicable:

(4) Fiscal impact and source of funding: None

Ext. 4634

DEPARTMENTAL	DEPARTMENTAL	DEPARTMENTAL HEAD SIGNATURE
COORDINATION	DATE RECOMMENDATION	
City Attorney	2/8/2010	C.A. Memo #2010-716
Planning & Zoning	2/7/2010	Approval Memo 10-09

X City Manager

ACTION TAKEN BY COMMISSION:

Ordinance Workshop lit Reading Reading

Resolution 1st Reading

Consideration

Results: Results:

ORDINANCE NO. 2010-

CITY OF POMPANO BEACH

Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY CREATING A NEW SECTION 155.063, "DISPENSING CONTROLLED SUBSTANCES," TO PROVIDE FOR REGULATIONS RELATING TO THE DISPENSING OF CONTROLLED SUBSTANCES; AND BY CREATING A NEW SECTION 155.029, "REASONABLE ACCOMMODATION," TO PROVIDE PROCEDURES FOR THE ACCOMMODATION OF PERSONS WITH DISABILITIES; PROVIDING FOR SEVERALITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach finds that it is in the best interest of the health, safety, and welfare of its residents, businesses, and visitors to enact regulations to provide for safer residential and commercial neighborhoods in the City; and

WHEREAS, the City Commission finds that the illegal sale, use, and delivery of controlled substances is a threat to the health, safety and welfare of the residents of the City; and

WHEREAS, the City Commission has recently been made aware by law enforcement and news reports that a pattern of illegal drug use and distribution has been associated with pain management clinics in neighboring municipalities, which dispense on-site narcotic drugs; and

WHEREAS, the City Commission has also been made aware of numerous newspaper stories in the recent past describing a "pipeline" of trafficking drugs from South Florida pain management clinics to users in other states, such as Kentucky, West Virginia, and Ohio; and

WHEREAS, the threat of increased crime associated with such clinics, is very significant and could undermine the economic health of the City's development and redevelopment efforts; and

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WHEREAS, the Florida Legislature has attempted to deter such illegal drug use, distribution and activities by the creation of a secure and privacy-protected, statewide electronic system of monitoring prescription drug medication information, to encourage safer controlled substance prescription decisions and to reduce the number of prescription drug overdoses, deaths and related crimes; and
WHEREAS, it is the intent of this Ordinance not to interfere with the legitimate medical use of controlled substances, but rather to prohibit the location of dispensing of narcotic drugs on site at medical offices, to the extent permitted by law; and

WHEREAS, in the absence of regulations identifying where narcotic drugs may be dispensed, the City's residents, visitors and businesses are more vulnerable to criminal actions, despite the provision of law enforcement services; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Pompano Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Pompano Beach finds the Ordinance is consistent with the Comprehensive Plan.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)(2), advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

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WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were in fact, heard; now, therefore, BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 155.063, "Dispensing Controlled Substances," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach, Florida, is

hereby created to read as follows:

□ 155.063 DISPENSING CONTROLLED SUBSTANCES.

(A) The following shall be prohibited in medical offices, business offices or professional offices within every zoning district:

(1) On-site dispensing of controlled substances that are identified in Schedule II, III or IV in Section 893.03, 893.035 or 893.036, Florida Statutes, in medical office,s, business offices or professional offices unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition:

(a) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.

(b) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice or intermediate care facility for the developmentally disabled which is licensed in □ this state.

(c) A health □hare practitioner when administering a controlled substance in the emergency room of a licensed hospital.

(d) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.

(e) A health care practitioner when dispensing a onetime, 72-hour emergency resupply of a controlled substance to a patient.

(B) Any request for reasonable accommodations to this section shall be governed by and processed pursuant to Section 155.029, Code of Ordinances.

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SECTION 2. That Section 155.029, "Reasonable Accommodation," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach, Florida, is hereby ,created to read as follows:

□ 155.029 REASONABLE ACCOMMODATION.

(A) This section implements the policy of the City of Pompano Beach for processing of requests for reasonable accommodation to its ordinances, rules, policies, and procedures for persons with disabilities as provided by the Federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) ("ADA"). For purposes of this section, a "disabled" individual or person is an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the City's land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set out in this section.

(B) A request by an applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form, which form is maintained by (and shall be submitted to) the Department of Development Services ("DDS"). The reasonable accommodation form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall be substantially in the form set forth below.

(C) Should the information provided by the applicant to the City include medical information or records, including records indicating the medical condition, diagnosis or medical history of the applicant, such individual may, at the time of submitting such medical information, request that the City, to the extent allowed by law, treat such medical information as confidential information of -the applicant. The City shall thereafter endeavor to provide written notice to the

applicant, and/or their representative, of any request received by the City for disclosure of die medical information or documentation which the applicant has previously requested, be treated as confidential by the City. The City will cooperate with the applicant, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the City shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counselor allocation of internal resources) in connection therewith, and may comply with any judicial order vwithout prior notice to the applicant.

(D) The City Manager, or his/her designee, shall have the authority to consider and act on requests for reasonable accomn-todation, after notice and public hearing to receive comments, input and information from the public (provided, however, the City Manager or designee sbqll not be required to render their decision at said public hearing). When a reasonable

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accommodation request form has been completed and submitted to the DDS, it will be referred to th.e City Manager, or designee, for review and consideration. The City Manager, or designee, shall issue a written determination within 45 days of the date of receipt of a. completed application and may, in accordance with federal law:

- (1) Grant the accommodation request;
- (2) Grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request; or
- (3) Deny the request, in accordance with federal law.

Any such denial shall be in writing and shall state the gratmds therefor. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party (i.e. the app/icant or his/her representative) by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City Manager, or designee, may, prior to the end of said 45-day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have. 15 days after the date of the request for additional infomiation to provide the requested information. In the event a request for additional information is made, the 45-day period to issue a written determination shall no longer be applicble, and the City Manager, or designee, shall issue a written detennination within 30 days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said 15-day period, the City Manager, or designee, shall issue a written notice advising that the requesting party had failed to timely submit the additional information, and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the City with regard to said reasonable accommodation request shall be required.

(E) In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in. the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this section the applicant must show:

- (1) A physical or mental impairment, which substantially limits one or more major life activities;
- (2) A record of having such impairment; or
- (3) That they are regarded as having such impairment.

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Next, the requesting party will have to demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing. The foregoing (as interpreted by the courts) shall be the basis for a decision upon a reasonable accommodation request made by the City Manager, or designee, or by the City Commission in the event of an appeal.

(F) Within 30 days after the City Manager's, or designee's, determination on a reasonable accommodation request is mailed to the requesting party, such applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the City

Commission who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed.

(G) There shall be no fee imposed by the City in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the City Commission, and the City shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

(H) While an application for reasonable accommodation, or appeal of a determination of same, is pending before the City, the City will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

(I) The following general provisions shall be applicable:

(1) The City shall display a notice in the City's public notice bulletin board (and shall maintain copies available for review in the DDS and the City Clerk's office), advising that public disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein..

(2) An applicant may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated by the applicant.

(3) The City shall provide such assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the form, filing an appeal, and appearing at a hearing etc. to ensure the process is accessible.

Reasonable accommodation request form:

1. Name of Applicant:

Telephone Number:

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2. Address:

3. Address of housing or other location at which accommodation is requested: .

4. Describe qualifying disability or handicap:

5. Describe the accommodation and the specific regulation(s) and or procedure(s) from which accommodation is sought:

6. Reasons the reasonable accommodation may be necessary for the individual with disabilities to use and enjoy the housing or other service:

7. Name, address and telephone number of representative, if applicable:

8. Other information:

9. Signature of Applicant or Representative, if applicable, or Qualifying Entity:

Date

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this day of , 2010.

PASSED SECOND READING this day of , 2010

LA.MAR FISHER, MAYOR

ATTEST:

MARY L. CHAMBERS, CITY CLERIC

GBL/jrm

2/5/10

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1 ORDINANCE 5, 2010

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4 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM
5 BEACH GARDENS, FLORIDA AMENDING CHAPTER 78. LAND
6 DEVELOPMENT. BY ADOPTING NEW SUBSECTION 78-
7 159(j)(47.1) AND BY AMENDING TABLE 21: PERMITTED,
8 CONDITIONAL AND PROHIBITED USE CHART IN ORDER TO
9 ADOPT REGULATIONS PERTAINING TO MEDICAL OFFICES;
10 FURTHER AMENDING CHAPTER 78 AT SECTION 78-751.

11 DEFINMONS. BY REPEALING THE DEFINITIONS OF
12 "DRUGSTORE OR PHARMACY", "OFFICE, MEDICAL OR
13 DENTAL", AND "OFFICE, BUSINESS OR PROFESSIONAL" AND
14 READOPTING SAME, AS REVISED, IN ORDER TO REVISE AND
15 CLARIFY SUCH DEFINITIONS; PROVIDING THAT EACH AND
16 EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 78.
17 LAND DEVELOPMENT. SHALL REMAIN IN FULL FORCE AND
18 EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS
19 CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO
20 CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER
21 PURPOSES.

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24 WHEREAS, the City Council of the City of Palm Beach Gardens has
determined
25 that in the absence of regulations identifying where narcotic drugs may be
dispensed,
26 the City's residents, visitors, and businesses are more vulnerable to criminal
actions,
27 despite the provision of law enforcement services; and
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29 WHEREAS, the City Council finds that the illegal sale, use, and
delivery of
30 controlled substances is a threat to the health, safety, and welfare of the
residents of the

31 City; and
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33 WHEREAS, the City Council has recently been made aware by law
enforcement
34 and news reports that a pattern of illegal drug use and distribution has been
associated
35 with pain management clinics in neighboring municipalities, which dispense
narcotic
36 drugs on site; and
37

38 WHEREAS, the City Council has determined that a need exists to adopt
39 regulations that identify where narcotic drugs may be dispensed in order to
deter
40 criminal activity and promote the public health, safety, and welfare; and
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42 WHEREAS, it is not the intent of this Ordinance to interfere with the
legitimate
43 medical use of controlled substances, but rather to prohibit the dispensing of
narcotic
44 drugs on site at medical offices, to the extent permitted by law; and
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Ordinance 5, 2010

1 WHEREAS, this Ordinance was reviewed by the Planning, Zoning, and Appeals
2 Board, sitting as the Local Planning Agency, at a public hearing on February 9,
2010,
3 and the Board recommended approval by a vote of 7 to 0; and
4

5 WHEREAS, the City Council deems approval of this Ordinance to be in the best
6 interests of the health, safety, and welfare of the residents and citizens of the
City of
7 Palm Beach Gardens and the public at large.
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10 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
11 OF PALM BEACH GARDENS, FLORIDA that:
12

13 SECTION 1. Chapter 78, Land Development of the Code of Ordinances of the
14 City of Palm Beach Gardens, Florida is hereby amended by adopting new subsection
15 78-159(j) (47.1) and annotating Table 21: Permitted, Conditional and Prohibited
Use
16 Chart at "Office, medical or dental by adding "Note" 47.1 in order to adopt
regulations

17 regarding the locations and circumstances under which narcotic drugs may be
18 dispensed; providing that Section 78-159 shall hereafter read as follows:

19
20 Sec. 78-159. Permitted uses, minor and major conditional uses, and prohibited
uses.

21
22 (a) (i) (These subsections shall remain in full force and effect as
previously
23 enacted.)

24
25 Table 21: Permitted, Conditional, and Prohibited Use Chart, is hereby amended
such
26 that "47.1" shall be added to the "Note" column at "Office, Medical or Dental."

27
28 (j) Additional Standards. The following standards apply to specific uses as
29 indicated in the "Note" column of Table 21.

30
31 (1) (47) (These subsections shall remain in full force and effect as
previously
32 enacted.)

33
34 (47,1) Office, medical or dental. Medical or dental offices shall be subject to
the
35 following regulations:

36
37 a. On-site dispensing of controlled substances that are identified in
38 Schedules II, III, or IV in Sections 893.03. 893.035. or 893.0356, Florida
Statutes,
39 is strictly prohibited, unless otherwise expressly permitted by statutory or
general
40 law. However, the following are exempt from this prohibition:

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42 1. A health care practitioner when administering a controlled
43 substance directly to a patient if the amount of the controlled substance is
44 a/leauate to treat thepatient during that particular treatment session.

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Ordinance 5, 2010
1 2. A pharmacist or health care practitioner when administering a
2 controlled substance to a patient or resident receiving care as a
Patient at
3 a hospital. nigsina home. ambulatory surgical center. hospicer or
4 intermediate care facility for the developmentally disabled which is
5 licensed by the state.

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7 3. A health care practitioner when administering a controlled
8 substance in the emergency room of a licensed hospital.

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10 4. A health care practitioner when administering or dispensing a
11 controlled substance to a person under the age of 16.

12
13 5. A health care practitioner when dispensing a one-time. 72-hour
14 emergency resupply of a controlled substance to a patient.

15
16 b. Additionally, the health care DractitIoner responsible for the
operation

17 and/or supervision of any medical or dental office shall execute an
?ffidavit
18 acknowledging the reaulations set forth hereinabove prior to payment of
the
19 require(' business tax, and annually thereafter upon renewal of same
Prior to the
20 issuapw of a business tax receipt. Failure or refusal to execute the
required
21 affidavit shall constitute Prima facie evidence that the sublect
medical or dental
22 office is operating in violation of the code of ordinances. which may
result in code
23 enforcement action, revocation of business tax receipt, and/or any
other actions
24 permifted by law.

25
26 (48) (70) (These subsections shall remain in full force and effect as previously
27 enacted.)

28
29 SECTION 2. Chapter 78, Land Development of the Code of Ordinances of
the
30 City of Palm Beach Gardens, Florida is hereby amended at Section 78-751.
31 "Definitions." by repealing the definitions for the terms "Drugstore or
pharmacy", "Office,
32 medical or dental", and "Office, business or professional" and readopting same
as
33 revised, providing that each of which shall be placed in alphabetical order in
the list of
34 definitions; providing that "Drugstore or pharmacy", "Office, medical or
dental", and
35 "Office, business or professionar shall hereafter be defined and read as
follows:

36
37 Drugstore or phannacy, general means a retail store which sells or
dispenses
38 drugs, including "controlled substances" as defined in Chapter 893. Florida
Statutes,
39 pharmaceuticals, medical supplies, items for personal hygiene, and a wide
variety of
40 convenience or consumer goods such as beverages, pre-packaged foods, books and
41 magazines, beauty products, tobacco products, and alcoholic beverages.

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Ordinance 5, 2010
Office, medical or dental means an establishment facifltv effering patients
efPler-ida providing health care ts chirooractors, osteoPaths, physical
therapists, nurses. acuouncturists, podiatrists, optometrists, psychiatrists (who
are also known as health care practitioners), or others who are duly licensed to
practice their respective medical or dental profession in the State of Florida, as
well as others, including, but not limited to, technicians and assistants who are
acting under the supervision and control of a licensed health care practitioner.
13 Office, business or professional means an establishment providing executive,
14 management, and professional services to the public, includingl but not limited
to, the
15 following; advertising services, business offices of private companies, business
offices
16 of utility companies, public or nonprofit agencies, trade associafions, and
employment

17 offices; excluding day labor and labor pool services; professional or consulting
offices
18 for accounting, architecture, computer technology, design, engineering,
landscape
19 architecture, law, urban planning, and similar professions; property and
financial
20 management, real estate; secretarial and telecommunication services; and travel
21 agencies. This definition does not include offices for the treatment of animals
on the
22 premises nor does it include Medical or Dental Offices.

23
24 SECTION 3. All ordinances or parts of ordinances in conflict be and the same
are
25 hereby repealed.

26
27 SECTION 4. Should any section or provision of this Ordinance or any portion
28 thereof, any paragraph, sentence, or word be declared by a court of competent
jurisdiction
29 to be invalid, such decision shall not affect the validity of the remainder of
this Ordinance.

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31 SECTION 5. Specific authority is hereby given to codify this Ordinance.

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33 SECTION 6. This Ordinance shall become effective immediately upon adoption.

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37 (The remainder of this page intentionally left blank)

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Ordinance 5, 2010

1 PASSED this , day of FOXI/trof , 2010, upon first reading.

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4 second and final reading.

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7 CITY OF PALM BECH NS

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10 BY
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20 Councilmember

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23 Robert G. Premuroso, Councilmember

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26 ATTEST:

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29 BY: i6/2

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33 APPROVED AS TO FORM

34 LEGAL SUFFICIENCY

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47 G:\aflomey_ahareORD1NANC201Q\Ordnaacce 5 2010 - Pain Clintcs-Chapter 711.cion

5 PASSED AND ADOPTED this /64) day of Fcii□wal , 2010, upon

FOR AGAINST ABSENT

Patricia Snider, C C, City Clerk

L hman, City Attorney

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