

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

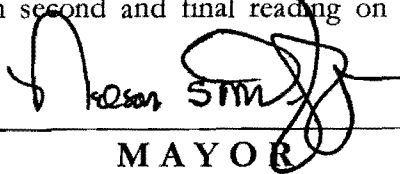
(b) That the applicant believes in good faith that the City through implementation of this section has intentionally or unintentionally violated federal or state law. The law(s) the City has allegedly violated shall be identified.

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