



**PALM BEACH COUNTY
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TO: The Honorable Karen Marcus, Chair, and,
Members of the Board of County Commissioners

FROM: Jon MacGillis, ASLA
Zoning Director 

DATE: April 28, 2011

**RE: Zoning In Progress (ZIP) for Pharmacies on March 31, 2011
Zoning BCC Agenda**

Purpose and Intent:

This memo serves to follow up to direction from the March 1, 2011 BCC Hearing to staff to review the possibility of establishing interim measures to address pharmacies that may be associated with Pain Management Clinics. Staff is recommending that the Board adopt a Zoning in Progress (ZIP) at the March 31, 2011 Zoning Hearing, to establish interim limits on the percentage of Type II, Controlled Substances that can be dispensed from new pharmacies or physicians (see attached).

The ZIP would remain in effect pending the adoption of more comprehensive amendments to Pain Management Clinics and Pharmacies in the Unified Land Development Code (ULDC) scheduled for the August 25, 2011 BCC Zoning Hearing as part of ULDC Amendment Round 2011-01.

Background and Summary – ZIP/ULDC Amendments:

The identification and regulation of "pill mill" activities requires coordination between law enforcement, the Department of Health, and Code Enforcement, among other regulating agencies. Several municipalities within PBC have adopted, or are in the process of adopting, Zoning regulations that limit dispensing by physicians and pharmacy sales, so as to prevent pill mill operators from circumventing current on-site dispensing limitations established by the State. These limits were established in accordance with the suggestions of representatives of the PBC Pharmacy Association.

At this time, it is highly likely that County staff will be recommending a similar approach to that taken by PBC municipalities; with the possibility of some refinement should any significant changes be adopted in the current Legislative Session, including retention and implementation of the prescription drug database, or the revoking of dispensing by physicians, among others. This Ordinance will also be applicable to any existing pharmacies, which has obvious enforcement benefits.



Staff is continuing to coordinate with persons who have offered to participate on a PBC Land Development Regulation Subcommittee for Pain Management Clinics including but not limited to representatives of: the Land Development Regulation Advisory Board (LDRAB); Department of Health; municipal Planning staff; PBSO Multi-Agency Diversion Task Force; PBC Medical Association; PBC Pharmacy Association; IPARC; and, the League of Cities.

2011-01 Amendment Schedule for Pain Clinics:

March 2, 2011: Subcommittee [Completed]
March 21, 2011: Subcommittee (Review Proposed ZIP) [Completed]
April 18, 2011: Subcommittee (Review Final Proposed Amendments)
May 25, 2011: LDRAB
June 27, 2011: BCC Zoning Hearing – Request for Permission to Advertise
July 28, 2011: BCC Zoning Hearing – 1st Reading
August 25, 2011: BCC Zoning Hearing – 2nd Reading

Conclusion:

Staff recommends that the Board adopt a Zoning in Progress implementing the attached provisions.

If you should have any questions regarding the proposed ZIP or any other related questions pertaining to this matter we can discuss them at the Zoning BCC Hearing on March 31, 2011.

Attachments: Attachment A, Zoning in Progress for Dispensing and Pharmacies

- c. Verdenia Baker, Assistant County Administrator
Barbara Alterman, Director, PZ&B
Robert Banks, Asst. Co. Atty.
Leonard Berger, Asst. Co. Atty.
LDRAB Pain Management Subcommittee Members
Maryann Kwok, Chief Planner, Zoning
William J Cross, AICP, Principal Site Planner

ATTACHMENT A

ZONING IN PROGRESS
DISPENSING AND PHARMACIES (GENERAL RETAIL SALES)
(Updated 3/23/11)

Part 1. ULDC Art. 1.1.2, Definitions (page 80 of 114), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] 1) Add the term pharmacy and define it as the primary use that provides for the retail sale/dispensing of prescription and non-prescription drugs; 2) Clarify that pharmacies fall under the use of General Retail Sales.

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 Definitions

P. Terms defined herein or referenced in this Article shall have the following meanings:

44. Pharmacy - shall mean an establishment offering goods for retail sale or on-site dispensing of prescription drugs, non-prescription drugs or both. [Renumber accordingly.]

P. Terms defined herein or referenced in this Article shall have the following meanings:

41. Retail Sales, General - for the purposes of Art. 4, an establishment providing general retail sales or rental of goods, but excluding those uses specifically classified as another use type. Uses include typical retail stores such as clothing stores, bookstores, business machine sales, food and grocery stores (excluding convenience stores), window tinting, and marine supply sales (excluding boat sales), and pharmacies. Uses shall also include the sale of bulky goods such as household goods, lawn mowers, mopeds, motorcycles and golf carts. Retail establishments may include limited repair services for their products. For impact fee purposes, general retail also includes services such as entertainment, eating and drinking establishments, and personal services.

Part 2. ULDC Art. 4.B.1.A.83, Medical or Dental Office (page 65 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Clarify F.S. provisions for standards and limitations for the dispensing of Schedule II, III and IV controlled substances by physicians.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

83. Medical or Dental Office

An establishment where patients, who are not lodged overnight, are admitted for examination or treatment by persons practicing any form of healing or health-building services 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. A pain management clinic shall not be considered a medical or dental office. [Ord. 2005 - 002] [Ord. 2010-009]

c. Sale or Dispensing of Controlled Substances
On-site dispensing of controlled substances that are identified in Schedule II, III or IV in F.S. § 893.03, and as further amended by F.S. § 893.035, 893.0355, or 893.0356, is prohibited, unless otherwise expressly permitted by statutory or general law.

Part 3. ULDC Art. 4.B.1.A.98, Personal Services (page 72 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Add reference to clarify that the sale or dispensing of controlled substances is not considered an accessory use to any Personal Services use.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

98. Personal Services

Notes:
Underlined indicates new text. If being relocated destination is noted in bolded brackets [Relocated to:]
Stricken indicates text to be deleted.
Italicized indicates text to be relocated. Source is noted in bolded brackets [Relocated from:].
.... A series of four bolded ellipses indicates language omitted to save space.

ATTACHMENT A

ZONING IN PROGRESS
DISPENSING AND PHARMACIES (GENERAL RETAIL SALES)
(Updated 3/23/11)

An establishment engaged in the provision of frequently or recurrently services of a personal nature; or, the provision of informational, instructional, personal improvement or similar professional services which may involve limited accessory retail sale of products. Typical uses include art and music schools, beauty and barbershops, driving schools, licensed therapeutic massage studios, photography studios, and tanning salons.

b. Sale or Dispensing of Controlled Substances

The limited accessory retail sale of products does not include the sale or dispensing of controlled substances, unless in compliance with the requirements for Medical or Dental Office, or General Retail Sales.

Part 4. ULDC Art. 4.B.1.A.114, General Retail Sales (page 85 of 166), is hereby amended as follows:

Reason for amendments: [Zoning/Co. Atty.] Establish standards that limit the dispensing of Schedule II drugs to no more than 15 percent of overall prescriptions filled within a 30 day period.

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

114.Retail Sales, General

An establishment providing general retail sales or rental of goods, but excluding those uses specifically classified as another use type. Uses include typical retail stores such as clothing stores, bookstores, business machine sales, food and grocery stores (excluding convenience stores), window tinting, and marine supply sales (excluding boat sales), and pharmacies. Uses shall also include the sale of bulky goods such as household goods, lawn mowers, mopeds, motorcycles and golf carts. Retail establishments may include limited repair services for their products. For impact fee purposes, general retail also includes services such as entertainment, eating and drinking establishments, and personal services.

g. Sale or Dispensing of Controlled Substances

A pharmacy shall be subject to the following:

- 1) No more than 15 percent of the total number of prescriptions filled within a thirty (30) day period can be derived from the sale of controlled substances that are identified in Schedule II in accordance with F.S. § 893.03, and as further amended by F.S. § 893.035, 893.0355, or 893.0356, as determined by audits or information provided through the Florida Department of Health or any other government agency having the legal right to view such records.

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