

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, PROVIDING FOR THE AMENDMENT OF THE NEW ZONING CODE, CHAPTER 155, "ZONING CODE," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES; BY AMENDING SECTION 155.2101, "SUMMARY TABLE," TO CONFORM TABLE TO AMENDMENTS PROVIDED FOR IN THIS ORDINANCE; BY AMENDING SECTION 155.2202, "CITY COMMISSION," TO REMOVE AUTHORITY OF THE CITY COMMISSION TO HEAR APPEALS OF DECISIONS FROM THE ZONING BOARD OF APPEALS; BY AMENDING SECTION 155.2402, "TEXT AMENDMENT," TO ALTER REVIEW OR COMMENT PROCEDURE OF AMENDMENTS TO ZONING CODE BY DEVELOPMENT REVIEW COMMITTEE (DRC); BY AMENDING SECTION 155.2406, "SPECIAL EXCEPTION," TO DEFINE "PERMITTED BY RIGHT" AND PROVIDING FOR RIGHTS AND LIMITATIONS FOR SUCH DESIGNATED USES; BY AMENDING SECTION 155.2415, "INTERIM USE PERMIT," AND SECTION 155.2420, "VARIANCE," TO RESCIND RIGHT TO APPEAL CERTAIN DECISIONS TO THE CITY COMMISSION; BY AMENDING SECTION 155.2424, "APPEAL," TO DELETE PROCEDURE FOR APPEALING CERTAIN DECISIONS OF THE ZONING BOARD OF APPEALS TO THE CITY COMMISSION; BY CREATING SECTION 155.2432, "REASONABLE ACCOMMODATION," TO ESTABLISH A PROCESS TO PROVIDE REQUIRED REASONABLE ACCOMMODATION UNDER FEDERAL LAW; BY AMENDING SECTION 155.4201, "GENERAL," TO GENERALLY PROHIBIT ON-SITE DISPENSING OF CERTAIN CONTROLLED SUBSTANCES; PROVIDING FOR LIMITED EXEMPTIONS; BY AMENDING SECTION 155.4209, "INSTITUTIONAL: HEALTH CARE USES," TO REMOVE OUTPATIENT PAIN THERAPY CLINICS FROM MEDICAL OR DENTAL CLINIC DEFINITION; BY AMENDING SECTION 155.4224, "COMMERCIAL: SEXUALLY ORIENTED BUSINESSES," TO LIMIT VARIANCE PROCEDURES FOR SEXUALLY ORIENTED BUSINESSES; BY AMENDING SECTION 155.4303, "STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES," TO DELETE THE SIZE LIMITATION FOR SOLAR ENERGY COLLECTION SYSTEMS; BY AMENDING ARTICLE 9, PART 5, "TERMS AND USES DEFINED," TO DELETE OUTPATIENT PAIN THERAPY CLINICS FROM THE DEFINITION OF MEDICAL OR DENTAL CLINIC; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pompano Beach (“City Commission”) found it necessary to revise its Zoning Code of Ordinances (“Code”) in order to update its zoning regulations and procedures; and

WHEREAS, the City Commission finds it now necessary to revise the City of Pompano Beach Zoning Code; and

WHEREAS, the City Commission finds that adoption of the amendments to Zoning Code through its police powers will protect the public health, safety, and welfare of the residents of the City, and furthers the purpose, goals, objectives, and policies of the City’s Comprehensive Plan; and

WHEREAS, pursuant to law, ten (10) days’ notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO 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 of Pompano Beach Zoning Code is hereby amended as provided in Exhibit “A,” attached hereto and made a part hereof.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any 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 January 1, 2013.

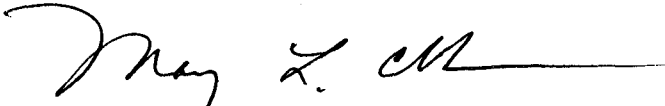
PASSED FIRST READING this 12th day of February, 2013.

PASSED SECOND READING this 26th day of February, 2013.



LAMAR FISHER, MAYOR

ATTEST:



MARY L. CHAMBERS, CITY CLERK

GBL/jrm
1/23/13
L:ord/ch155/2013-128

ARTICLE 2: ADMINISTRATION

155.2101. SUMMARY TABLE

TABLE 155.2101: SUMMARY OF DEVELOPMENT REVIEW RESPONSIBILITIES							
C = COMMENT R = RECOMMENDATION D = DECISION A = APPEAL < > = STANDARD PUBLIC HEARING [] = QUASI-JUDICIAL PUBLIC HEARING							
APPLICATION REVIEW PROCEDURE	REVIEW AND DECISION-MAKING AUTHORITIES						
	DEVELOPMENT REVIEW COMMITTEE	DEVELOPMENT SERVICES DIRECTOR	HISTORIC PRESERVATION COMMITTEE	ARCHITECTURAL APPEARANCE COMMITTEE	PLANNING AND ZONING BOARD ¹	ZONING BOARD OF APPEALS	CITY COMMISSION

PERMITS AND DEVELOPMENT APPROVALS							

Special Exception (Sec. 155.2406)		R				[D]	{A}

Interim Use Permit (Sec. 155.2415)		R			R	[D]	{A}
RELIEF PROCEDURES							

Variance (Sec. 155.2420)		R				[D]	{A}

155.2202. CITY COMMISSION

A. DECIDE APPLICATIONS FOR DEVELOPMENT PERMIT

~~10. Appeal of decisions by the Zoning Board of Appeals granting a Special Exception, Variance, and/or Interim Use applications (Sec. 155.2424).~~

14 10. Appeal of decisions by the Planning and Zoning Board on Major Site Plan applications (Sec. 155.2424).

12 11. Appeal of decisions by the Architectural Appearance Committee on Major Building Design applications (Sec. 155.2424).

13 12. Appeal of decisions by the Historic Preservation Committee on Major Certificate of Appropriateness applications (Sec. 155.2424).

155.2402. TEXT AMENDMENT

B. Text Amendment Procedure

4. Step 4: Staff Review and Action

Applicable to a recommendation by the Development Services Director following DRC review and comment; except that if the application is initiated by the City Commission, P&Z, or Development Services Director no DRC review or comment is required. (See Section 155.2304)

155.2406. SPECIAL EXCEPTION

I. LAWFUL SPECIAL EXCEPTION USE

For purposes of this section, "Permitted by Right "P"" shall include uses that were permitted and/or legally approved for permanent development under the applicable jurisdiction. When a building or lot is approved for a Use designated as Permitted by Right "P" in a particular zoning district, and the Use is later designated as Permitted by Special Exception "S", that use shall be considered a lawful special exception use. Lawful special exception uses are not required to obtain Special Exception approval. Expansions of lawful special exceptions uses shall be permitted only on a finding that the expansion is for additions or alterations to buildings or land improvements that existed at the time the use was designated Permitted by Right "P" and within the area of the lot included in the ownership at the time the use was designated Permitted by Right "P". Expansions of lawful special exception uses shall be subject to the dimensional and intensity standards for uses designated as Permitted by Right "P" in the district or districts in which they are located.

155.2415. INTERIM USE PERMIT

E. APPEAL

~~A party aggrieved by the final decision of the ZBA granting an application for an Interim Use Permit may appeal the decision to the City Commission in accordance with the procedures in Section 155.2422, Appeal.~~

F. EFFECT OF APPROVAL

G. EXPIRATION

155.2420. VARIANCE

E. APPEAL

~~A party aggrieved by the final decision of the ZBA granting an application for a Variance may appeal the decision to the City Commission in accordance with the procedures in Section 155.2424, Appeal.~~

F. RECORDATION

G. EFFECT OF APPROVAL

H. EXPIRATION

I. AMENDMENT

155.2424. APPEAL

B. RIGHT TO APPEAL

2. Parties aggrieved by a final decision by the ZBA.

~~a. A party aggrieved by the final decision by the ZBA granting a Special Exception, Interim Use Permit, or Variance may appeal the decision to the City Commission. The Appeal Procedure as set forth below in Section 155.2424.C shall not apply. The Appeal procedure for a party aggrieved by the final decision of the ZBA granting a Special Exception, Interim Use Permit, or Variance shall be as follows:~~

~~i. Final results in matters coming before the Zoning Board of Appeals as noted on the agenda by the Secretary of the Zoning Board of Appeals subsequent to the consultation of the meeting of the Board shall be filed with the City Commission within three working days of the meeting of the Zoning Board of Appeals.~~

~~ii. In the event that the Zoning Board of Appeals has granted an application for special exception, variance and/or interim use permit, an appeal to the City Commission may be instituted by a City Commissioner, the City Manager or any individual entitled to notice of the original proceeding before the Zoning Board of Appeals if notice of such appeal is delivered in writing to the City Manager within 15 days from the decision of the Zoning Board of Appeals. In the event an appeal as provided for herein has been timely filed, no action may be taken on the order of the Zoning Board of Appeals which granted a special exception, variance and/or interim use permit until the conclusion of the appeal before the City Commission.~~

~~iii. Upon receipt of a timely notice of appeal, the City Manager shall place the appeal on a regular City Commission agenda for a meeting which is to be held within 21 days of the filing of the appeal with the City Manager. Notice shall be provided to the petitioner and/or owner of the property as reflected on the petition filed with the Zoning Board of Appeals. Notice shall be mailed by regular mail to the address shown thereon provided, however, that no matter shall be placed on a City Commission meeting agenda to be held less than five days from the date the notice is mailed.~~

~~iv. In the event of a scheduled City Commission vacation as provided for in Section 16 of the Pompano Beach Charter or in the event of an inability of the City Commission to meet for any reason for two consecutive regularly scheduled meetings, the 21-day time period for the appeal shall be extended through the second regularly scheduled meeting of the City Commission after the occurrence of such event. Additionally, the City Commission, upon good cause shown by the petitioner and/or property owner, shall have the authority to grant an extension of time for conducting an appeal.~~

~~v. Certiorari review. Any person or persons, aggrieved by any decision of the Zoning Board of Appeals or a decision of the City Commission as provided for herein, may petition the Circuit Court for issuance of a Writ of Certiorari in the manner and within the time provided for the Florida Rules of Appellate procedure.~~

~~3-2.~~ A party aggrieved by a final decision by the P&Z on a Major Site Plan application, by the AAC on a Major Building Design application, or by the HPC on a Major Certificate of Appropriateness application may appeal the decision to the City Commission in accordance with this section, including the procedures at set forth in Section 155.2424.C.

~~4-3.~~ Decisions relating to application of the Building Code are appealable in accordance with the Florida Building Code and Chapter 152 (Buildings) of the Code of Ordinances.

155.2432. REASONABLE ACCOMMODATION

A. PURPOSE

The purpose of this section is to establish a uniform mechanism 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").

B. APPLICABILITY

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.

C. REASONABLE ACCOMMODATION PROCEDURE

1. Step 1: Pre-Application Conference

Optional (See Section 155.2301.).

2. Step 2: Neighborhood Meeting

Not applicable.

3. Step 3: Application Submittal and Acceptance

Applicable (See Section 155.2303.).

A request by an applicant for reasonable accommodation under this section shall be

made in writing by completion of a reasonable accommodation request form. The reasonable accommodation form shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request and shall include the following information: Applicant's name, telephone number, and address; Address of housing or other location at which accommodation is requested; a description of qualifying disability or handicap; Description of the accommodation and the specific regulation(s) and or procedure(s) from which accommodation is sought; Reasons the reasonable accommodation may be necessary for the individual with disabilities to use and enjoy the housing or other service; Name, address and telephone number of representative, if applicable; any other relevant information; and the Signature of Applicant or Representative, if applicable, or Qualifying Entity.

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.

4. Step 4: Staff Review and Action

Applicable to a final decision by the City Manager within 45 days of the determination that the applications is complete and 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). The City Manager may, in accordance with federal law:

- a. Grant the accommodation request;
- b. Grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request; or
- c. 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 or 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.

5. Step 5: Public Hearing Scheduling and Notice

Not Applicable.

6. Step 6: Advisory Body Review and Recommendation

Not Applicable.

7. Step 7: Decision-Making Body Review and Decision

Not Applicable.

D. REASONABLE ACCOMMODATION REVIEW STANDARDS

In determining whether the reasonable accommodation request shall be granted or denied, the applicant shall be required to comply with the following:

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

E. EFFECT OF PENDING APPLICATION FOR REASONABLE ACCOMMODATION

While an application for reasonable accommodation is pending before the city, the city will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

G. APPEAL

A party aggrieved by the decision of the City Manager may appeal the decision to the City Commission in accordance with the procedures in Section 155.2424, Appeal. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal.

H. ADDITIONAL PROVISIONS FOR REASONABLE ACCOMMODATIONS

The following general provisions shall be applicable:

EXHIBIT "A"

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.
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.

ARTICLE 4: USE STANDARDS

155.4201. GENERAL

A. PURPOSE

The purpose of this part is to designate those principal land uses allowed in each of the various zoning districts—whether as a permitted by right or only after special review—and to provide use-specific standards where necessary to minimize or otherwise mitigate potential adverse impacts on other development in the zoning district.

B. Standards Applicable To All Uses

9. Unless otherwise expressly permitted by statutory or general law, on-site dispensing of controlled substances that are identified in Schedule II, III or IV in F.S. §§ 893.03, 893.035 or 893.0356, is prohibited, regardless of zoning district. 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; and
- e. A health care practitioner when dispensing a onetime, 72-hour emergency resupply of a controlled substance to a patient.

Any request for reasonable accommodation to the prohibition of on-site dispensing of controlled substances, as listed above, shall be submitted in accordance with Section 155.2432, Reasonable Accommodation.

155.4209 INSTITUTIONAL: HEALTH CARE USES

155.4209.E. MEDICAL OR DENTAL CLINIC

2. Definition

A medical or dental clinic is a small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be

overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, ~~outpatient pain therapy clinics~~, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).

155.4224 COMMERCIAL: SEXUALLY ORIENTED BUSINESSES

155.4224.A. SEXUALLY ORIENTED BUSINESS

4. Standards

d. Punitive Standards and Right to Appeal

i. Other than the procedures to appeal the decision of the City's Development Services Director as provided subsection iii below, no variances from the standards listed in Section 155.4224.A.3 or 155.4224.A.4 shall be permitted for any reason.

ii. No zoning conditions, restrictions, safeguards, or standards shall apply to or be imposed on any sexually oriented business, other than those prohibitions and restrictions expressly set forth in this section and in the city's code of ordinances.

iii. A party aggrieved by the final decision of the Development Services Director on a application to establish a Sexually Oriented Business may appeal the Decision to the ZBA in accordance with the procedures and standards in Section 155.2424, Appeal.

155.4303 STANDARDS FOR SPECIFIC ACCESSORY USES AND STRUCTURES

155.4303.EE SOLAR ENERGY COLLECTION SYSTEM

3. Standards

c. ~~Size~~

~~The area of the system shall not exceed one-half the footprint of the principal structure or 600 square feet, whichever is greater.~~

d-c. Maintenance

e-d. Solar Easements

f-e. Consideration of Solar Access in Application of Tree Preservation Standards

ARTICLE 9: DEFINITIONS AND INTERPRETATION

PART 5 TERMS AND USES DEFINED

Medical or Dental Clinic

A small-scale facility where patients are admitted for examination and treatment by one or more physicians, dentists, or other health practitioners on a short-term basis. The use includes the offices of physicians, dentists, chiropractors, optometrists, podiatrists, audiologists, speech pathologists, physical therapists, acupuncturists, psychologists, and other health practitioners. It also includes facilities providing short-term outpatient care and treatment (which may or may not be overnight), such as urgent care centers, kidney dialysis centers, ambulatory surgical clinics, ~~outpatient pain therapy clinics~~, biofeedback centers, sleep disorder clinics, family planning clinics, community health clinics, and health maintenance organization (HMO) medical clinics. Such facilities that provide overnight care and treatment may include sleeping rooms for care workers and members of patients' families. This use does not include hospitals (which are much larger in scale) or blood/tissue collection centers, drug or alcohol treatment facilities, massage therapy establishments, or psychiatric treatment facilities (which provide specialized medical services).