

# Planning Commission

October 6, 2016



<b>Case No:</b>	16AMEND1000
<b>Project Name:</b>	LDC Text Amendment – Drug Treatment Clinic
<b>Case Manager:</b>	Joseph Haberman, AICP, Planning Manager

## REQUEST

Amend the Land Development Code (LDC) to define and address drug treatment clinics, including those that dispense methadone.

## SUMMARY

On November 19, 2015, Metro Council passed Ordinance #200, 2015, directing the staff of Planning & Design Services to draft amendments to the LDC to address and regulate methadone clinics. The ordinance was sponsored by Councilmembers Ackerson, Yates, Blackwell, Shanklin, James, Welch, Woolridge and Johnson (Attachment #1).

Currently, methadone clinics are not specifically mentioned or addressed in the LDC. The Planning Director has interpreted that methadone treatment clinics fall within the definition of *clinic*, as defined in LDC Section 1.2.2. Excluding clinics that are within hospitals or operated by governmental entities, clinics may be permitted with a Conditional Use Permit in any zoning district pursuant to LDC Section 4.2.29.

Working with the County Attorney's Office, staff has reviewed similar zoning regulations adopted by other local governments, as well as legal decisions related to methadone clinic regulations. Staff evaluated several different alternatives, including regulating methadone clinics specifically, regulating methadone clinics more broadly with other types of drug treatment clinics and regulating methadone clinics more broadly with all other types of medical clinics.

Any approach must be in compliance with the Americans with Disabilities Act (ADA). The ADA applies to zoning, and as such, prohibits a governmental entity from enacting or applying a zoning regulation in a way that discriminates against individuals with disabilities. Only a regulation that is not facially discriminatory and does not result in discriminatory treatment of, or disparate impact on, disabled individuals may be considered valid and enforceable. Persons seeking treatment for their addiction to opiates, opioids and other controlled substances are protected under provisions of the ADA.

Working under the premise of the existing Planning Director's interpretation, staff recommends regulating drug treatment clinics in the same manner as any other medical clinic – permitted in any zoning district with a Conditional Use Permit. Where treatment is incidental to a larger and more encompassing use, such as a hospital or governmental agency, the activity would be permitted under the provisions for that other use.

In reviewing the existing Conditional Use Permit provisions that apply to all medical clinics, some additional revisions are proposed for clarification. To address adverse impacts of medical clinics and hospitals approved under LDC 4.2.29, staff proposes the following amendments:

- In Section 1.2.2, change “Clinic” to “Medical Clinic” and revise the definition to include drug treatment clinics; add a definition of “Medical Office.”
- Remove reference to the certificate of need requirement. In Kentucky, the certificate of need process is administered by the Cabinet for Health and Family Services and is intended to prevent the proliferation of health care facilities, health services and major medical equipment that increase the cost of quality health care. However, not all medical facilities require a certificate of need. Under the existing provisions, it can be interpreted that an applicant cannot receive the conditional use permit unless the cabinet requires the certificate. Such an interpretation would make several medical facilities ineligible for approval.
- To address outdoor loitering, require clinics to provide an indoor waiting area(s) for clients. The waiting area shall be large enough to accommodate the clients arriving for services. This criterion is consistent with a clinic requirement provided in 908 KAR 1:340 Section 8.
- To address the impacts on adjacent properties, require parking at the site shall be adequate to accommodate the maximum number of clients expected to be at the site at one time or have specific appointment schedules to prevent the influx of clients that would disruptive or unsafe to the surrounding community. This criterion is consistent with a clinic requirement provided in 908 KAR 1:340 Section 8.
- Require hospitals and medical clinics to be located on or near a collector or arterial street with reasonable access to public transportation.

As this alternative regulates drug treatment clinics the same as other medical clinics, it would treat persons with disabilities in the same manner. For that reason, this alternative does not discriminate against individuals with disabilities related to drug addiction.

### PROPOSED AMENDMENT

The following LDC text amendment was prepared by the Office of Planning & Design Service’s staff in consultation with the County Attorney’s office. As this amendment was requested by Metro Council, the Planning Commission must make a recommendation to Metro Council and the other legislative bodies with zoning authority to approve, approve with modifications, or deny the amendment:

#### 1.2.2 Definitions

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**Medical Clinic** - A facility which provides treatment which requires observation and recovery normally lasting 1 to 5 hours, for illness, injury, abnormality or pregnancy. Such facilities may also provide examination, diagnosis, ambulatory care, ~~and~~ outpatient services, ~~and~~ **counseling services**, but do not provide overnight care. This term includes ~~drug~~ **clinics that treat persons addicted to controlled substances as a primary function. A medical office, hospital or government agency providing drug treatment that is incidental to other services shall not be considered a medical clinic.**

\* \* \* \* \*

*Hospital* - A facility licensed and regulated by the Commonwealth of Kentucky, which provides diagnosis, acute and post-acute care and treatment of illness, injury, abnormality or pregnancy. Such facilities usually include clinical laboratory services, X-ray services, surgery, obstetric care, etc. This term includes the following types of facilities: mental institutions and sanitariums; mental health receiving centers; and detoxification centers.

\* \* \* \* \*

**Office Use, Medical ("Medical Office") – An office use that provides personal medical, dental, and health services, including those related to prevention, diagnosis, treatment and rehabilitation, provided by physicians, dentists, nurses, and other health personnel. This term does not include hospitals and medical clinics as such uses are specifically defined in this Land Development Code. The term also does not include a government agency providing medical or health service that is incidental to other service.**

\* \* \* \* \*

*Rehabilitation Home* - A building or group of buildings providing residence for persons recovering from the effects of drug or alcohol abuse, psychiatric disorders, or as a condition of their parole or probation. Such homes may provide counseling in educational, vocational, or other areas by a paid or volunteer staff and generally have 24-hour-a-day supervision. A rehabilitation home is not transitional housing. This definition does not apply to residential care facilities regulated by KRS 100.982. **This term does not include uses more specifically defined in this Land Development Code, such as hospitals and medical clinics.**

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#### 4.2.1 Intent and Applicability

Certain land uses due to their extent, nature of operation, limited application, or relationship to natural resources are considered as exceptional cases. The uses listed in this Part may be permitted in certain districts by Conditional Use Permit following a public hearing before the Board of Zoning Adjustment provided such uses will not have an adverse effect on neighboring property, are not in conflict with the goals and plan elements of the Comprehensive Plan, the proposed uses are essential to or will promote the public health, safety, and the general welfare in one or more zones, and are in compliance with the listed standards and requirements.

The following uses are subject to the Conditional Use Permit process:

Section Conditional Use

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4.2.29 Hospitals ~~and Medical Clinics, and Other Medical Facilities~~

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#### 4.2.29 Hospitals and Medical Clinics, ~~and Other Medical Facilities~~

~~Facilities requiring a Certificate of Need issued by the Commonwealth of Kentucky, including hospitals~~  
**Hospitals and medical clinics, and other medical facilities,** may be allowed in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements:

- A. ~~Signs—One~~ **In form districts where nonresidential freestanding signs are not permitted, a single freestanding on-premise sign, not to exceeding 80 square feet in area or and not exceeding 10 feet in height, may be placed at each of the major entrances, except in districts where signs are allowed. Attached signs may be located at any height. Attached signs shall be designed in accordance with form district requirements, but the Board shall determine reserves the right to approve the size and location of all attached signs.**
- B. All buildings and structures shall be at least 30 feet from any property line.
- C. **Medical Clinics shall provide an indoor waiting area(s) for clients. The waiting area shall be large enough to accommodate the clients arriving for services.**

**D. Parking for medical clinics shall be adequate to accommodate the maximum number of clients expected to be at the site at one time.**

**E. Such facilities shall be located on or near a collector or arterial street with reasonable access to public transportation.**

**NOTE: The provisions of this Section 4.2.29 do not apply to Medical Offices as such are defined in this Land Development Code.**

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**Table 9.1.2B Minimum and Maximum Motor Vehicle Parking Based on Use**

USE CATEGORY Office/ Financial	SPECIFIC USES	MINIMUM SPACES REQUIRED	MAXIMUM SPACES ALLOWED
Office	Medical/Dental/ Veterinary Office or <b><u>Medical</u></b> Clinic	1 space for each 250 sq. ft. of gross floor area in suburban form districts.  1 space for each 500 sq. ft. of gross floor area in traditional form districts.	1 space for each 150 sq. ft. of gross floor area, <b><u>except in cases in which additional parking is required by the Board of Zoning Adjustment for facilities receiving a conditional use permit pursuant to section 4.2.29</u></b>

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