



City of Deltona

PLANNING & ZONING BOARD MEETING WEDNESDAY, SEPTEMBER 17, 2014

7:00 P.M.

**CITY HALL COMMISSION CHAMBERS
2345 PROVIDENCE BOULEVARD
DELTONA, FLORIDA 32725**

Chairman
Tom Burbank

Vice-Chairman
Noble Olasimbo

Members:

Wendy Hickey

Victor Ramos

Adam Walosik

Herb Zischkau

Stony Sixma

Staff Liaison
Chris Bowley, AICP

AGENDA

1. CALL TO ORDER:
2. ROLL CALL:
3. APPROVAL OF MINUTES: August 20, 2014
4. PUBLIC COMMENTS:
5. OLD BUSINESS:
6. NEW BUSINESS:
 - A. CU14-004, Conditional Use Application, Harmony Clinic (Resolution No. 2014-22).
 - B. VR14-001 Variance Application, Harmony Clinic (Resolution No. 2014-24).
 - C. CU14-005 Conditional Use Application, East Coast Dragon Tattoo (Resolution No. 2014-29).
 - D. Ordinance No. 27-2014: An Amendment to Section 110-827, Accessory Uses and Structures pertaining to Shed Design Standards.
 - E. Ordinance No. 26-2014: An Amendment to add Chapter 99 to the City's Code of Ordinances pertaining to Residential Prison Diversion Programs.
 - F. Ordinance No. 10-2014: An Amendment to add Article XIV to the City's Code of Ordinances pertaining to Medical Marijuana Dispensaries.
7. MEMBER COMMENTS:
8. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the Planning & Zoning Board with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 878-8100.

**Deltona Municipal Complex, 2345 Providence Blvd., Deltona, FL 32725
(386) 878-8100; FAX: (386) 878-8501
City Webpage: www.deltonafl.gov**

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**CITY OF DELTONA, FLORIDA
PLANNING & ZONING BOARD MEETING
WEDNESDAY, AUGUST 20, 2014**

5 A Regular Meeting of the Deltona Planning and Zoning Board was held on Wednesday, August
6 20, 2014, in the City's Commission Chambers located at 2345 Providence Boulevard, Deltona,
7 Florida.

8
9 Chairman Burbank thanked everyone for coming and he stated that he was informed that Item 6-
10 A, which is on the agenda, will be postponed until the September, Planning and Zoning Board
11 meeting to take place on Wednesday, September 17, 2014 so that both the Variance and
12 Conditional Use application can be advertised and heard properly. He stated the only business to
13 address is the roll call and approval of minutes.

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15 **1. CALL TO ORDER:**

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17 The meeting discussion started at 7:04 p.m.

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19 **2. ROLL CALL:**

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21 Chairman Tom Burbank Present
22 Vice-Chairman Noble Olasimbo Absent-Excused
23 Member-Secretary Wendy Hickey Present
24 Member Victor Ramos Absent
25 Member Adam Walosik Absent-Excused
26 Member Stony Sixma Present
27 Member Herb Zischkau Present

28
29
30 Also present: Planning & Development Director, Chris Bowley, AICP; Planning & Development
31 Assistant Director, Ron Paradise; Planner, Scott McGrath; Administrative Assistant, Kathrine
32 Kyp.

33
34 **3. APPROVAL OF MINUTES:**

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36 **A. Minutes:**

37
38 **1. Meeting – July 16, 2014.**

39
40 **Motion by Member Burbank, seconded by Member Sixma to adopt the minutes of the**
41 **Planning & Zoning Board Meeting of July 16, 2014, as presented.**

42
43 **Motion carried with members present voting unanimously.**

44
45 **4. PUBLIC COMMENTS:** None

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47 **5. OLD BUSINESS:** None
48

1 **6. NEW BUSINESS:**
2

3 **A. CU14-004, Conditional Use Application CU14-004 Harmony Clinic (Resolution No.**
4 **2014-22).**
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6 This item will be heard at the September 17, 2014, meeting.
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8 **7. MEMBER COMMENT:**
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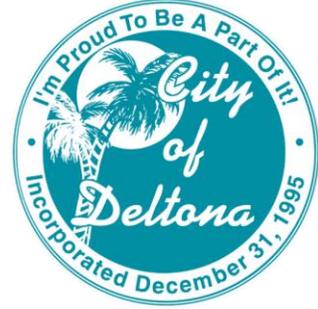
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11 **8. ADJOURNMENT:**
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13 There being no further business, the meeting adjourned at 7:06 p.m.
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20 **ATTEST:**
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Tom Burbank, CHAIRMAN

Kathrine Kyp, RECORDING SECRETARY
23



Memorandum

To: Planning and Zoning Board

From: Chris Bowley, AICP

Date: September 2, 2014

Re: Conditional Use Application, Project No. CU14-004, Harmony Clinic

SUMMARY OF APPLICATION:

Applicant: H. Lester Carrero, owner.

Request: The City has received an application for a Conditional Use for the Office Residential (OR) zoned property located at 1948 Saxon Boulevard. Dr. Carrero intends to convert the current single family dwelling into a medical office/clinic (Sec. 110-313(c)) for his chiropractic practice. The OR district permits “medical and dental offices and clinics” as a Conditional Use. The application meets the purpose and intent of the OR zoning district.

A. SITE INFORMATION:

1. **Tax Parcel No.:** 8130-16-06-0120
2. **Property Acreage:** ± 0.3 Acres
3. **Property Location:** 1948 Saxon Boulevard, Deltona, Florida 32725. Generally located at the southeast corner of the intersection of Diane Terrace and Saxon Boulevard.
4. **Legal Description:** Lot 9, excluding the northern 6.6 feet, measured on the entire length for new right of way Block 98, Deltona Lakes Unit 3, map book 35 pages 105-120 included per ordinance 4958 pages 2266-2267 per ordinance 6178 page 2455 per ordinance 6260 pages 0976-0977 per ordinance 6884 page 1727.

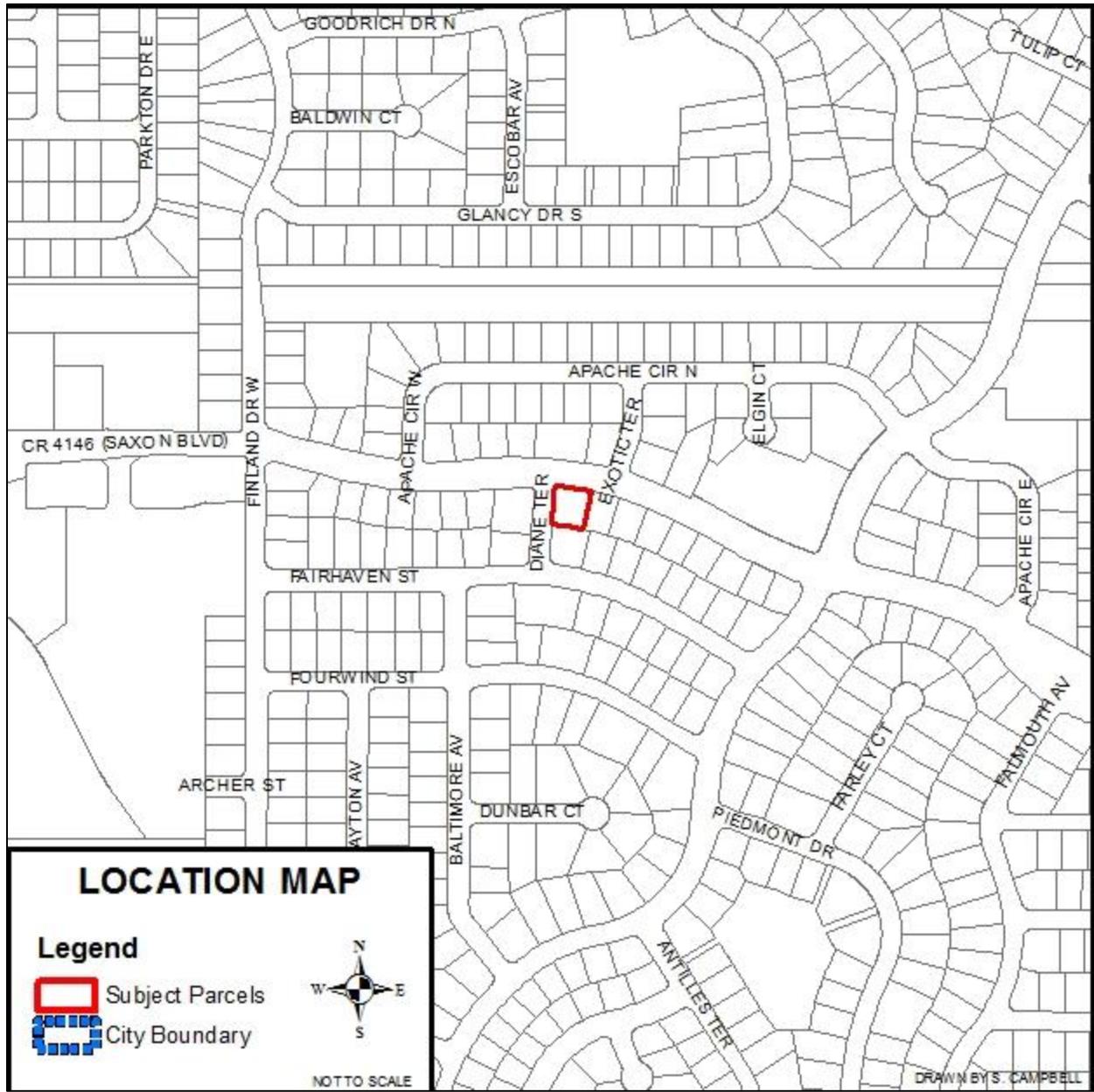


Figure 1: Location Map



Figure 2: Aerial Photo



Figure 3: Future land Use Map

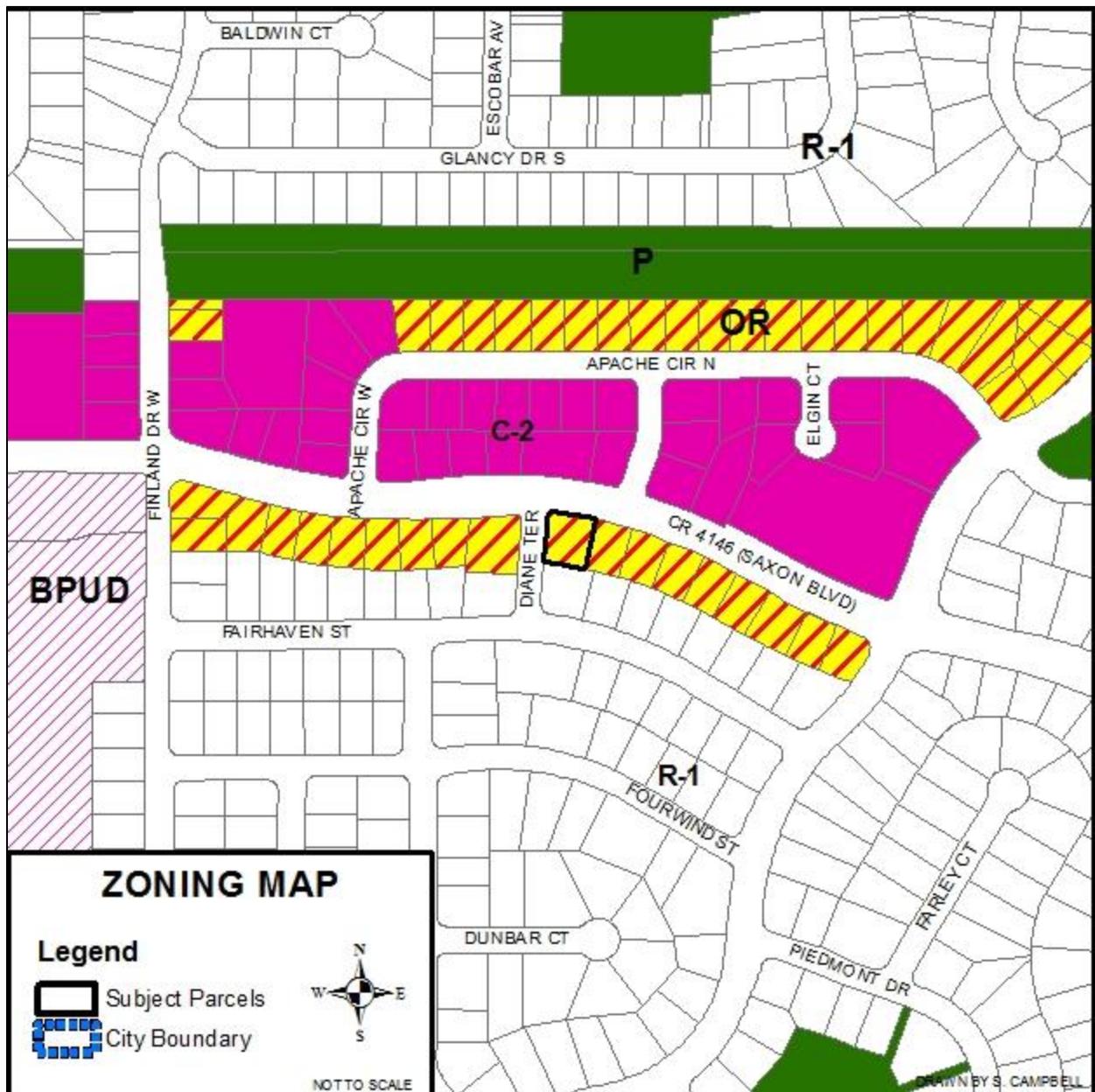


Figure 4: Zoning Map

B. Existing Zoning:

1. **Subject Property: Office Residential (OR)**
2. **Adjacent Properties:**
 - North: General Commercial (C-2)**
 - South: Single-Family Residential (R-1)**
 - East: Office Residential (OR)**
 - West: Office Residential (OR)**

C. Zoning Description:

Deltona Code of Ordinances, Chapter 110, Section 313.

Purpose and intent. The purpose of the Office Residential (OR) zoning district is to meet two objectives. First, the district is intended to be established in single-family residential areas where road expansions and/or high traffic volumes, nearby nonresidential development, and existing or developing nuisances (noise, lights, vibrations, etc.) decrease or potentially diminish the future potential for the continued use of the area for single-family residential purposes. Second, the OR district is intended to be established as a buffer between existing or proposed single-family residential development and existing or proposed commercial development and high traffic volume streets, and other nuisance producing areas. Designation of an area as an OR zoning district recognizes that the area is a transitioning commercial area, as referenced in the adopted Deltona Comprehensive Plan, as it may be amended from time to time.

The proposed site and use intent meets this intent and purpose.

D. Background:

The subject property fronts on Saxon Boulevard and is located at the southeast corner of the intersection of Diane Terrace and Saxon Boulevard. The property is generally located about a half-mile east of I-4. The City Deltona’s Building Official inspected the building to assess the structural integrity after a car accident and noticed work being done without a building permit. The unit was in the process of being converted from a residential dwelling into a medical clinic for chiropractic services. The interior work has since been permitted and completed.

The owner, Dr. Lester Carrero, has been working with City staff to bring the property into compliance and be able to use the property as a medical office/clinic. Medical offices/clinics require a Condition Use permit in the OR zoning district.

E. Support Information

Public Facilities:

- a. Potable Water: to be supplied by Deltona Water
- b. Sanitary Sewer: to be supplied by private septic system
- c. Fire Protection: Fire Station 63
- d. Law Enforcement: Volusia County Sheriff’s Office (VCSO)
- e. Electricity: Duke Energy

F. Matters for Consideration:

Per Code, Section 110-1102(g), the City Commission may deny any application for a Conditional Use for one or more of the following reasons:

1. Is the proposed use consistent with the intent of this chapter?

Yes, “medical and dental offices and clinics” is cited as a Conditional Use in the OR zoning district and the proposed use is consistent with the purpose and intent of the City’s Land Development Code.

2. Is the proposed use consistent with the Comprehensive Plan?

Yes, the Comprehensive Plan Future Land Use Map designation is Commercial (C) and the proposed use is consistent with the Comprehensive Plan.

3. Will the proposal adversely affect the public interest?

No, the conversion from residential to office meets the purpose and intent of the OR zoning district and the location of non-residential use at this site which is adjacent to an arterial roadway (Saxon Boulevard) is compatible.

4. Can the applicant meet the expressed requirements of applicable City Conditional Use regulations?

Yes, however, per the generalized site plan submitted with this application, variances will also be needed for the site to function as a non-residential use. If the Conditional Use and variances are granted, the applicant will also need to submit an application for a Final Site Plan.

5. Will the applicant be able to meet all requirements imposed by federal, state, or local governments?

No, the applicant will need zoning variances to meet local requirements. The variances have been applied for in a separate accompanying application.

6. Will the proposed use generate undue traffic congestion?

No, removing the entrance from Saxon Boulevard will help to reduce starts and stops on the thoroughfare that cause congestion. The existing drives are also in close proximity to the Diane Terrace intersection, limiting clear line of site for vehicles. According to the 9th Addition of the ITE Manual, medical and dental office building would generate 36.13 trips per day per 1,000 square feet. The existing structure is 1,656 square feet, thus generating 60 trips per day. The pass-by trips would offer a 10% decrease and, no longer using the structure as a residence would subtract another 10 trips for adjust total of 44 new trips per day on Saxon Boulevard. This would not be considered undue congestion.

7. Will the proposed use create a hazard, public nuisance or be dangerous?

No, the medical office/clinic would relocate the drive from Saxon Boulevard to Diane Terrace, reducing the number of driveway cuts on Saxon Boulevard, improving clear sight distances and increasing the safety of the area.

8. Will the proposed use materially alter the character of surrounding neighborhoods or adversely affect the value of surrounding land, structures or buildings?

Yes, allowing the medical office/clinic at 1948 Saxon Boulevard would meet the general intent of the first objective of the OR zoning classification. However, to meet the requirements of the Land Development Code for Final Site Plan, variances are needed to reduce the buffer yard between the proposed office and the residential uses.

9. Will the proposed use adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution?

No, the area is already developed in an urban fashion and the transition from dwelling to medical office/clinic will not have an adverse effect on the environment or cause excessive pollution.

CONCLUSION/STAFF RECOMMENDATION:

Staff recommends approval of the Conditional Use application #CU14-004 with the following conditions:

1. Approval of the variances needed to complete the Final Site Plan application process.
2. Applicant cannot use the building as a home occupation per Section 110-807.
3. All SJRWMD stormwater management requirements must be met on-site.
4. The rear landscape buffer must offer 100% opacity through the use of vegetation with or without a fence or screen wall.

RESOLUTION NO. 2014-22

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA; GRANTING A CONDITIONAL USE TO PERMIT A MEDICAL OFFICE/CLINIC WITHIN AN OR, OFFICE RESIDENTIAL ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 1948 SAXON BOULEVARD, WITHIN THE CITY OF DELTONA; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Deltona has received application number CU14-004 to allow for a Conditional Use within an OR, Office Residential, zoning district for a medical office/clinic to be located at 1948 Saxon Boulevard; and

WHEREAS, Section 110-313(c) of the City of Deltona Code of Ordinances requires medical and dental offices and clinics to be a Conditional Use within the OR, Office Residential zoning district; and

WHEREAS, Section 110-1102, of the City of Deltona Code of Ordinances provides regulations for Conditional Use review and the proposed Conditional Use application number CU14-004 is consistent with Section 110-1102 of the City of Deltona Code of Ordinances; and

WHEREAS, the granting of a Conditional Use for application number CU14-004 does not include, address, or entitle zoning variances to be requested by the applicant and shall include conditions of approval that the structure on-site not be used for a home occupation, per Section 110-807 of the City of Deltona Code of Ordinances, and that variances are obtained under separate application to achieve site plan approval; and

WHEREAS, the granting of a Conditional Use for application number CU14-004 does not include, address, or entitle zoning variances to be requested by the applicant; and

WHEREAS, the City of Deltona held public hearings after due public notice to review the proposed Conditional Use application number CU14-004.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, AS FOLLOWS:

SECTION 1. In accordance with the City of Deltona Code of Ordinances, the City of Deltona City Commission hereby grants approval for Conditional Use, CU14-004, for the use of medical office/clinic to be located at 1948 Saxon Boulevard, subject to the conditions of approval listed within Resolution No. 2014-22.

SECTION 2. This Resolution shall become effective immediately upon its adoption and is valid for a period not to exceed twelve (12) months from the date of adoption.

PASSED AND RESOLVED THIS _____ DAY OF _____, 2014,
BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA.

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

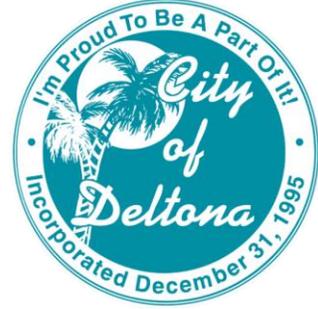
JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney

Attachments:

VR14-001 Staff Report
Resolution No. 2014-24



Memorandum

To: Planning and Zoning Board

From: Chris Bowley, AICP

Date: September 2, 2014

Re: Zoning Variance Application, Project No. VR14-001, Harmony Clinic

I. SUMMARY OF APPLICATION:

Applicant: H. Lester Carrero, owner.

Request: The City has received an application for variances for the property at 1948 Saxon Boulevard. Dr. Carrero intends to convert the current single family dwelling into an office for his chiropractic practice.

A. SITE INFORMATION:

1. **Tax Parcel No.:** 8130-16-06-0120
2. **Property Acreage:** ± 0.3 Acres
3. **Property Location:** 1948 Saxon Boulevard, Deltona, Florida 32725. Generally located at the southeast corner of the intersection of Diane Terrace and Saxon Boulevard.
4. **Legal Description:** Lot 9, excluding the northern 6.6 feet, measured on the entire length for new right of way Block 98, Deltona Lakes Unit 3, map book 35 pages 105-120 included per ordinance 4958 pages 2266-2267 per ordinance 6178 page 2455 per ordinance 6260 pages 0976-0977 per ordinance 6884 page 1727.

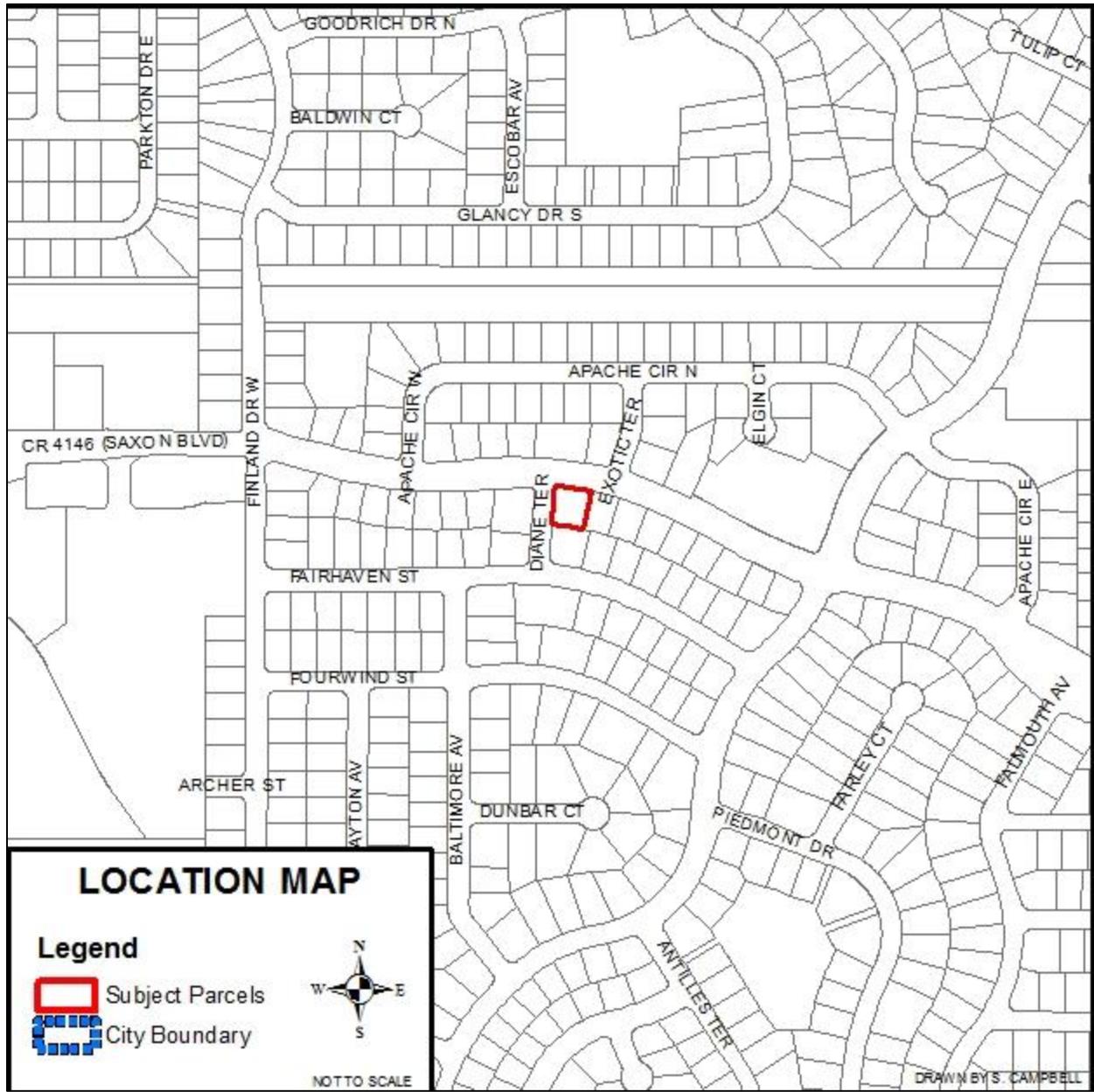


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Figure 2: Aerial Photo



Figure 3: Future land Use Map

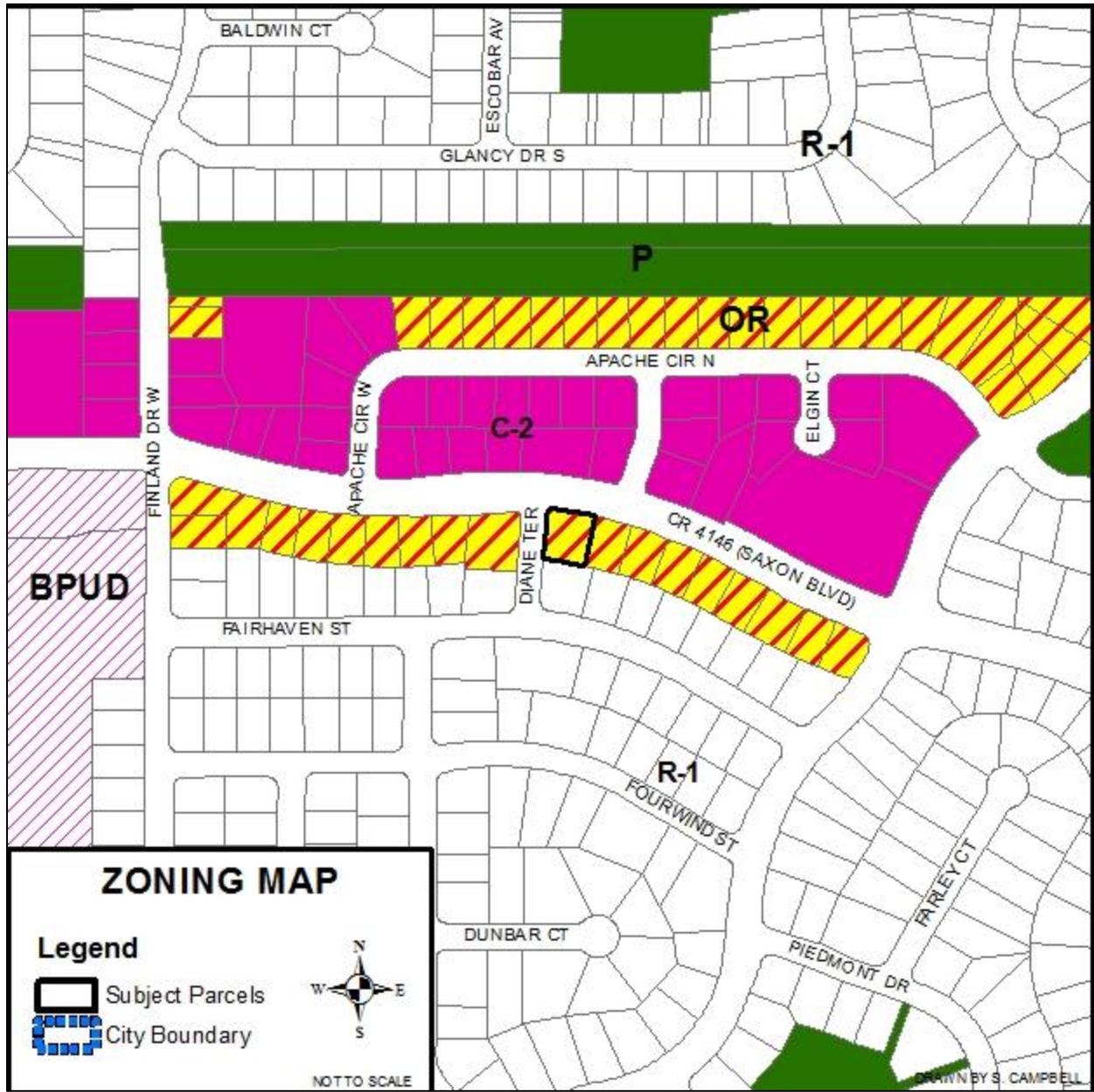


Figure 4: Zoning Map

B. Existing Zoning:

1. **Subject Property: Office Residential (OR)**
2. **Adjacent Properties:**
 - North: General Commercial (C-2)**
 - South: Single-Family Residential (R-1)**
 - East: Office Residential (OR)**
 - West: Office Residential (OR)**

C. Zoning Description:

Deltona Code of Ordinances, Chapter 110, Section 313.

Purpose and intent. The purpose of the Office Residential (OR) zoning district is to meet two objectives. First, the district is intended to be established in single-family residential areas where road expansions and/or high traffic volumes, nearby nonresidential development, and existing or developing nuisances (noise, lights, vibrations, etc.) decrease or potentially diminish the future potential for the continued use of the area for single-family residential purposes. Second, the OR district is intended to be established as a buffer between existing or proposed single-family residential development and existing or proposed commercial development and high traffic volume streets, and other nuisance producing areas. Designation of an area as an OR zoning district recognizes that the area is a transitioning commercial area, as referenced in the adopted Deltona Comprehensive Plan, as it may be amended from time to time.

The proposed site and use intent meets this intent and purpose.

D. Background:

The subject property fronts on Saxon Boulevard and is located at the southeast corner of the intersection of Diane Terrace and Saxon Boulevard. The property is generally located about a half-mile east of I-4. The City Deltona’s Building Official inspected the building to assess the structural integrity after a car accident and noticed work being done without a building permit. The unit was in the process of being converted from a residential dwelling into a medical clinic for chiropractic services. The interior work has since been permitted and completed.

The owner, Dr. Lester Carrero, has been working with City staff to bring the property into compliance and be able to use the property as a medical office/clinic. Medical offices/clinics require Condition Use approval in the OR zoning district. The property will also need two variances. The first would be to reduce the minimum parking spaces from 11 to 7, the other would be to allow a portion of the rear setback and bufferyard to be used for a driveway and parking.

Required Setback (per Land Development Code Section 110-313 (d)):

- Front yard: Minimum 25 feet
- Side yard: 7.5 feet.
- Side street yard: 15 feet.
- Rear yard: 25 feet.
- Requested rear yard setback: 5 feet
- Requested rear yard variance: 20 feet

E. Support Information

Public Facilities:

- a. Potable Water: to be supplied by Deltona Water
- b. Sanitary Sewer: to be supplied by private septic system
- c. Fire Protection: Fire Station 63
- d. Law Enforcement: Volusia County Sheriff's Office (VCSO)
- e. Electricity: Duke Energy

F. Matters for Consideration:

Section 110-1103, Code of City Ordinances, states that the City shall consider the following matters when reviewing applications for zoning variances:

1. Do special conditions and circumstances exist which are peculiar to the land, structure, sign or building involved and which are not applicable to other lands, structures, signs or buildings in the same zoning classification?

Yes, the northern 6-feet of the property was taken for the Saxon Boulevard widening, leaving the applicant with a smaller yard. The diminished yard size increases the difficulty of on-site parking needed for a medical office/clinic use, which causes the need for the variances.

2. Special conditions and circumstances that do not result from the actions of the applicant?

Yes, the reduced size of the lot, due to the eminent domain action, hampers commercial development. The requirements of the Land Development Code could only be met through variances or greatly reducing the size of the existing building.

3. Would literal interpretation of the provisions of this chapter deprive the applicant of rights commonly enjoyed by other properties in the same zoning classifications, under the terms of the chapter, and would work cause an unnecessary and undue hardship on the applicant?

Yes, literal interpretation would deprive the applicant of the same rights commonly enjoyed by others in the Office Residential zoning district due to site constraints. For the site to develop in a non-residential manner and maintain the existing structure, variances are needed.

4. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure or sign?

Yes, the variances are the minimum needed make the house into a non-residential use.

5. Would the granting of the variance be in harmony with the general intent and purpose of this chapter and the City of Deltona Comprehensive Plan, as it may be amended from time to time, and that such variance will not be injurious to the area involved?

Yes, the future land use category for the site is Commercial. Granting of the variances would allow for a non-residential use to be developed on-site. While the rear buffer yard will be reduce by 80% the site has ample area to achieve a 100% opaque buffer between the subject property and its adjoining neighbors.

STAFF RECOMMENDATION

Staff recommends approval of Variance Application VR14-001 with the following conditions:

1. Complete the Final Site Plan application process.
2. Applicant cannot use the building as a home occupation per Section 110-807.
3. All SJRWMD stormwater management requirements must be met on-site.
4. The rear landscape buffer must offer 100% opacity through the use of vegetation with or without a fence or screen wall.

RESOLUTION NO. 2014-24

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA, GRANTING A VARIANCE FROM THE REAR YARD SETBACK, MINIMUM LANDSCAPE BUFFER WIDTH, AND MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS FOR THE PROPERTY LOCATED AT 1948 SAXON BOULEVARD, WITHIN THE CITY OF DELTONA; PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Deltona adopted Sections 110-313 and 110-828 of the City of Deltona Code of Ordinances, as amended; and

WHEREAS, the subject property is located at 1948 Saxon Boulevard and has a future land use designation of Commercial, per the City's Comprehensive Plan, and a zoning classification of Office Residential (OR) that is consistent with the future land use designation and contemplated non-residential use of the subject property; and

WHEREAS, a zoning variance application has been received by the City of Deltona, meeting the basic requirements for a variance to be granted from the required minimum rear yard setback, the minimum landscape buffer requirement from 25-feet to seven-feet, set forth in Section 110-313(d), and to reduce the minimum number of required off-street parking spaces from 11 to seven spaces, as set forth in Section 110-828 of the City of Deltona Code of Ordinances for the subject property; and

WHEREAS, non-residential use of the subject property located at 1948 Saxon Boulevard requires the needs for zoning variances, due to site physical constraints; and

WHEREAS, the City Commission has found a literal enforcement of the provision of Chapter 110, Zoning Ordinance, would result in unnecessary and undue hardship on the applicant that are not self-imposed; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, THAT

SECTION 1. In accordance with City of Deltona Code of Ordinance No. 110-1103, as amended, the City of Deltona City Commission hereby grants the variances from the required minimum rear yard setback, the minimum landscape buffer requirement from 25-feet to seven-feet, set forth in Section 110-313(d), and to reduce the minimum number of required off-street parking

spaces from 11 to seven spaces, as set forth in Section 110-828 of the City of Deltona Code of Ordinances for the subject property (Project No. VR14-001).

SECTION 2. Conflicts. Any and all Ordinances or parts of Ordinances of the City of Deltona in conflict herewith are hereby repealed.

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

SECTION 4. Effective Date. This Resolution shall become effective immediately upon its final passage and adoption and is valid for a period of twelve (12) months from the date of adoption.

PASSED AND RESOLVED THIS _____ DAY OF _____, 2014,
BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA.

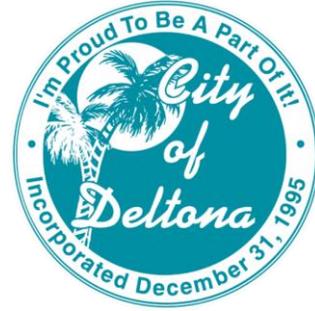
JOHN C. MASIARCZYK, SR., MAYOR

ATTEST:

JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality for use
and reliance by the City of Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney



Memorandum

To: Planning and Zoning Board

From: Chris Bowley, AICP

Date: September 2, 2014

Re: Conditional Use Application for East Coast Dragon Tattoo Project No. CU14-005

I. SUMMARY OF APPLICATION:

Applicant: Mr. Julio Rubles, Owner of East Coast Dragon Tattoo

Request: The City has received an application for a Conditional Use to allow a tattoo and body piercing shop to open in the existing Deltona Square Plaza located at 577 Deltona Boulevard. Tattoo shops require a Conditional Use approval to operate in the C-2 zoning district.

A. SITE INFORMATION:

Tax Parcel No.: 8036-05-09-0040

Property Acreage: ±1.59 Acres

Property Location: 577 Deltona Boulevard, suite 16. The Plaza is generally located approximately one half mile north of the intersection of Dirksen Drive/Debary Road Avenue and Deltona Boulevards.

Legal Description: Lot 4 Block 1013 Deltona Lakes Re-plat of Unit 37 & 29 Map Book 27 Pages 181 Thru 183 Per Ordinance Book 5288 Page 3959 Per Ordinance Book 5658 Page 2669.

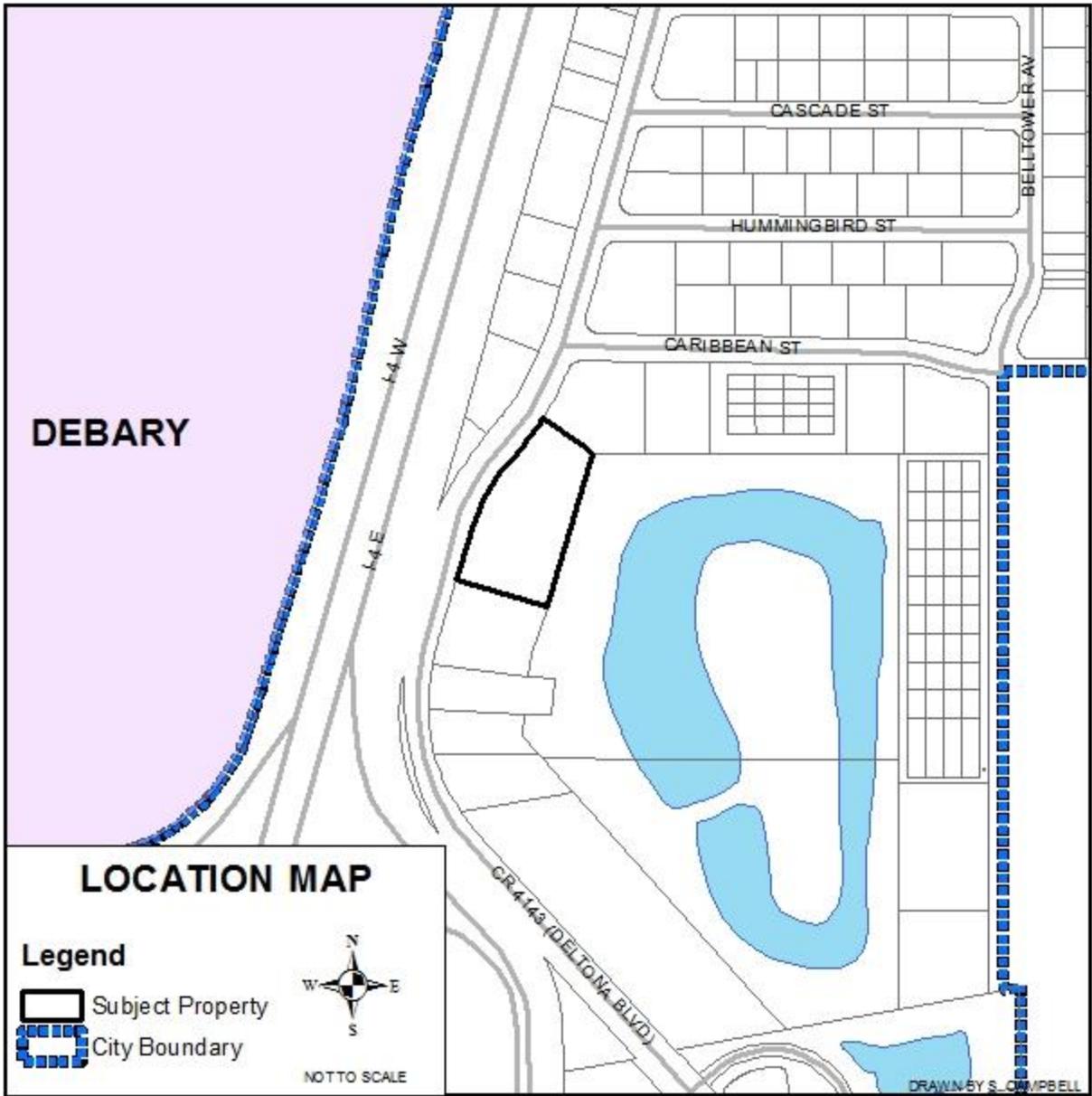


Figure 1: Location Map



Figure 2: Aerial Photo

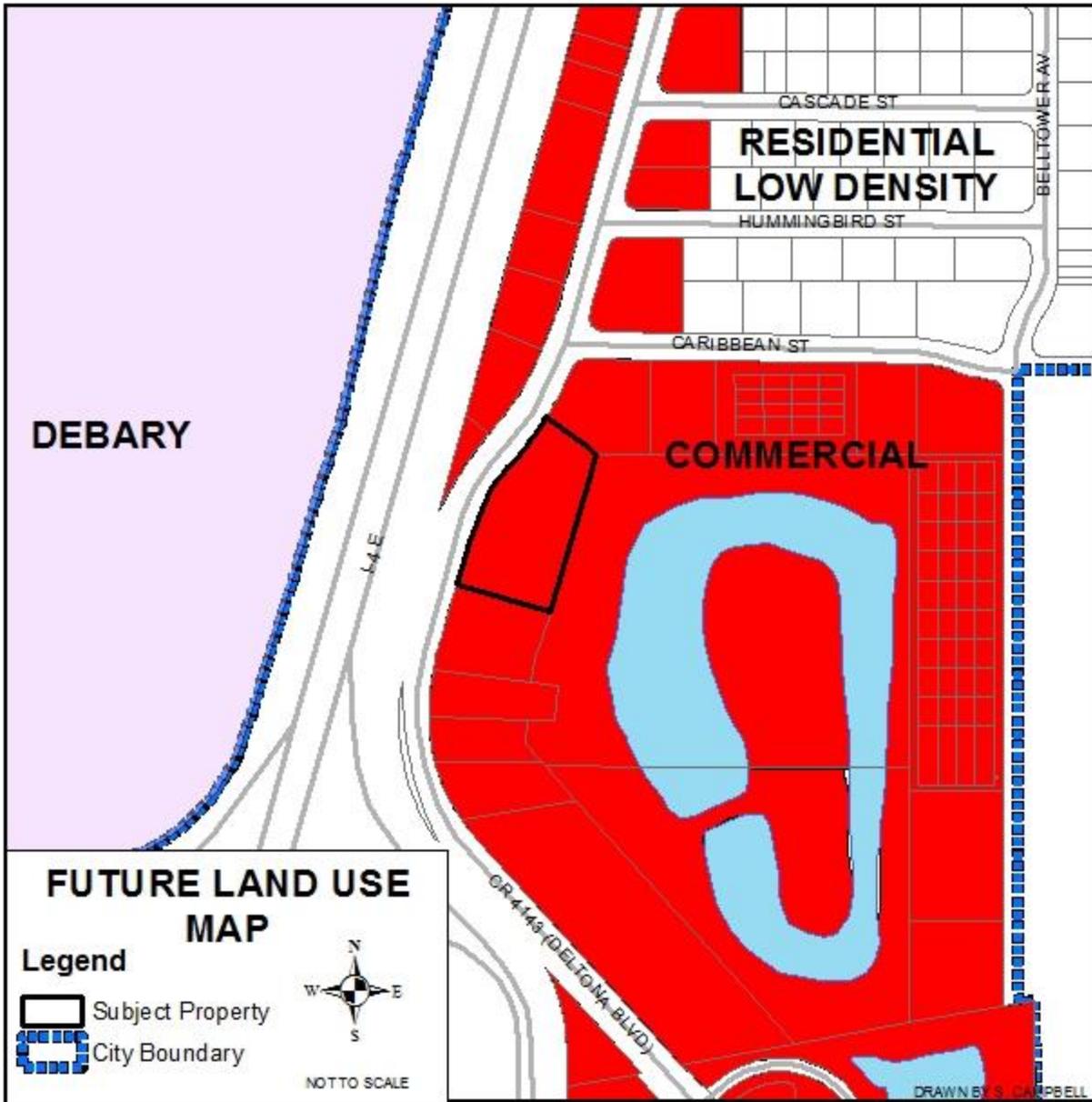


Figure 3: Future land Use Map

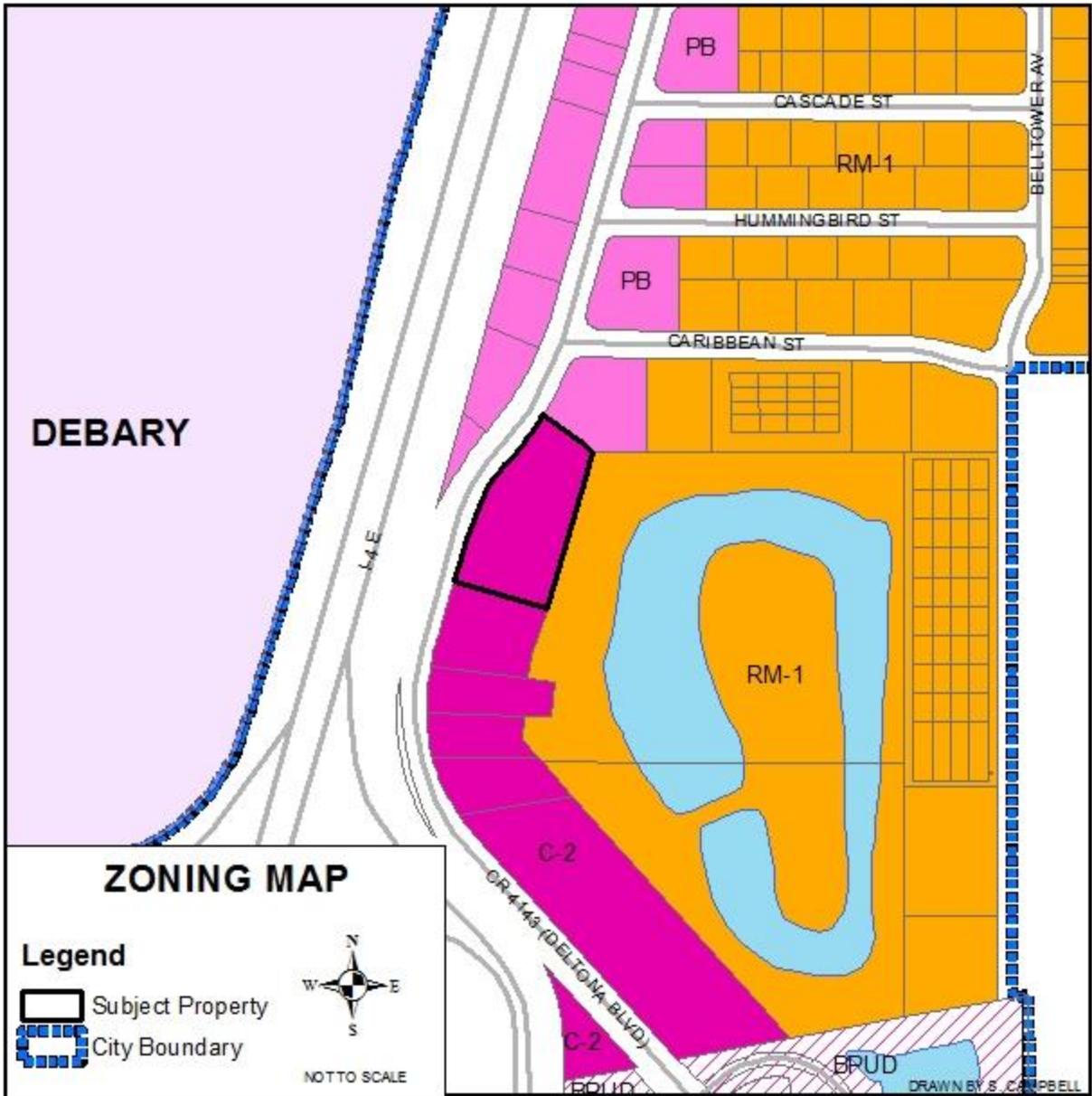


Figure 4: Zoning Map

B. Existing Zoning:

1. Subject Property:

Existing: General Commercial (C-2)

2. Adjacent Properties:

North: Professional Business (PB)

South: General Commercial (C-2)

East: Multi-family (RM-1)

West: I-4 Right of Way

C. Zoning Description:

General Commercial (C-2) Purpose and intent. The purpose and intent of the C-2 General Commercial classification is to encourage the development of intensive commercial areas providing a wide range of goods and services, and located adjoining at least one major collector or arterial road. The C-2 classification is intended to be applied to strip retail areas and may be applied to Interstate Highway interchange areas and other intersections that are characterized by high traffic volumes appropriate for highway-oriented commercial development and shopping centers. This district is not intended to be applied within established residential areas, except when those areas are either in transition, blighted, or designated in the commercial future land use category on the adopted Future Land Use Map. This zoning district shall only be applied to areas designated in the commercial future land use category on the adopted Deltona Comprehensive Plan Future Land Use Map.

D. Background:

The City has received an application for a Conditional Use to allow a tattoo parlor to open in the existing Deltona Square Plaza located at 577 Deltona Boulevard. A tattoo parlor requires a Conditional Use approval to operate in the C-2 zoning district.

E. Support Information

Public Facilities:

- a. Potable Water: to be supplied by Deltona Water
- b. Sanitary Sewer: to be supplied by Deltona Water
- c. Fire Protection: Fire Station 63
- d. Law Enforcement: Volusia County Sheriff's Office (VCSO)
- e. Electricity: Duke Energy

F. Matters for Consideration:

Per Code, Section 110-1102(g), the City Commission may approve, approve with conditions, or deny any application for a Conditional Use for one or more of the following reasons:

1. Is the proposed use consistent with the intent of this chapter?

Tattoo parlors appear as a Conditional Use option as part of the C-2 zoning district. The City Land Development Code does not have any specific supplemental regulations to guide the location or appropriateness of a tattoo parlor at a certain location. This not to suggest that the City regulations are devoid of guidance with regard to the location of a tattoo operation. The C-2 zoning is intended to facilitate the development of more intensive commercial uses that may be beyond what is considered neighborhood oriented. However, most C-2 uses represent typical commercial uses such as offices, and general retail that may not be inconsistent with the residential character of the City. From the perspective of a tattoo parlor, there are opportunities for such uses within the City as a permitted principal use. The C-3 (heavy commercial) and the Industrial zoning classifications allow tattoo parlors as a permitted principal use. The C-3 and Industrial zoning classifications allow intensive uses and are not generally compatible with residential areas. This incompatibility is evidenced by the fact that the C-3 and Industrial zoning classifications are not widely applied within the City jurisdiction. Tattoo parlors could be considered contentious land uses and blighting influences. Part of the logic behind the aforementioned inferences is that tattoo parlors are sometimes after hour establishments and, in some cases, traditionally located in areas that exhibit a plethora of after hour uses like bars and nightclubs. The storefront design and signage associated with some tattoo establishments can be very attention getting, featuring an abundance of neon and/or bright colors/designs which may be considered out of character for some areas.

2. Is the proposed use consistent with the Comprehensive Plan?

With appropriate conditions to protect nearby residential and commercial uses, the proposed use would be consistent with the Comprehensive Plan.

3. Will the proposal adversely affect the public interest?

Anecdotal observation indicates that tattoo art has become more mainstream. However, while tattoo art has been more accepted, the stigma and perception of blight often associated with tattoo parlors is a concern that falls within the ambit of public interest. Again, conditions to include limited hours of operation and a less conspicuous storefront may be employed to address some of the concerns about such a use.

4. **Can the applicant meet the expressed requirements of applicable City Conditional Use regulations?**

The City can condition a Conditional Use application. The applicant should have no problem complying with reasonable conditions.

5. **Will the applicant be able to meet all requirements imposed by federal, state or local governments?**

Tattooing is a regulated industry. The State is the entity that inspects and ensures that tattoo operations are sanitary and comply with public health rules.

6. **Will the proposed use generate undue traffic congestion?**

No, the applicant will be filling an empty suite in an existing commercial strip center; the parking and traffic have already been taken into consideration. This use will not create undue congestion.

7. **Will the proposed use create a hazard, public nuisance or be dangerous?**

A tattoo parlor could become a public nuisance or hazard if not properly regulated. Tattoo parlors can be an after hour use and late night activity can be incompatible with residential neighborhoods. In addition, sign options should be restricted as well. Suggested regulations include a limitation of hours of operation and a limitation on sign types.

8. **Will the proposed use materially alter the character of surrounding neighborhoods or adversely affect the value of surrounding land, structures or buildings?**

The tattoo parlor is proposed for an existing suite in an existing strip center. There is already an existing after hour use in the strip center – a bar known locally as the “Bulldog Saloon”. The bar comports to the separation requirements of a bar from a house of worship, school, etc. or other bar. There are no separation requirements articulated in the City zoning regulations between a bar and a tattoo parlor. However, the concentration of after hour uses in an area can change the character of nearby commercial and residential environments. Currently, the bar is a small operation occupying only limited space in a small strip center. Expanding after hour activity in the area could result in more visitors coming to the area. However, a concentration of after hour businesses can change the perception of the area and over time tends to drive out other businesses, even if those businesses are daytime uses. Nearby neighborhoods may also experience elevated traffic activity during traditional off peak hours.

9. Will the proposed use adversely affect the natural environment, natural resources or scenic beauty, or cause excessive pollution?

No, the area is already developed in an urban fashion, allowing a tattoo parlor in the existing commercial plaza will not adversely affect the environment, natural resources, scenic beauty or cause excessive pollution.

CONCLUSION/STAFF RECOMMENDATION:

With regard to controversial land uses like tattoo parlors, bars, nightclubs, etc. there are really two ways of which to manage such uses. One method is to concentrate controversial uses into known districts where those wishing to partake in the goods/services offered can go and experience these activities. The concentration method also allows a local government to allocate resources (like law enforcement) to manage such activities. This method typically works well in highly urbanized areas. The other approach is to disperse contentious land uses throughout a community. This is the method typically utilized by less urbanized communities that have a high percentage of residential land uses and this is the approach the City tends to favor. For example, bars/nightclubs cannot be located within 1,000 feet of another such establishment.

There is recognition that the tattoo parlor Conditional Use application is for a suite within a strip center that contains an after hour use – Bulldog Saloon. As has been mentioned, the City approach to allocating some after hour land uses (bars/nightclubs) is to disperse such uses. While locating the proposed tattoo parlor near an existing bar may be contrary to the dispersal strategy, the City can manage land uses of a certain character by other methods. One method is to limit the hours of operation of the proposed tattoo parlor.

Finally, tattoo parlors can be associated with effulgent storefronts and signage. Signs are regulated through the City Land Development Code and a goal of the sign regulations is to limit brilliance to protect the City view-shed.

Therefore, City staff suggests that the Conditional Use for a tattoo parlor be approved subject to the following conditions:

- 1) The tattoo parlor can only operate from 10:00 am to 10:00 pm.
- 2) No neon or neon like signs or similar apparatus can be displayed at the tattoo parlor.
- 3) All other signage, including window signs/display shall comply with Chapter 102 of the City Land Development Code.

RESOLUTION NO. 2014-29

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA; GRANTING A CONDITIONAL USE TO PERMIT TATTOO PARLOR WITHIN THE C-2, GENERAL COMMERCIAL ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 577 DELTONA BOULEVARD, WITHIN THE CITY OF DELTONA; PROVIDING FOR CONDITIONS OF APPROVAL; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Deltona has received application number CU14-005 to allow for a Conditional Use within the C-2, General Commercial, zoning district for a Tattoo Parlor to be located at 577 Deltona Boulevard; and

WHEREAS, Section 110-316(c) of the City of Deltona Code of Ordinances requires Tattoo Parlors be approved as a Conditional Use within the C-2, General Commercial zoning district; and

WHEREAS, Section 110-1102, of the City of Deltona Code of Ordinances provides regulations for Conditional Use review and the proposed Conditional Use application number CU14-005 is consistent with Section 110-1102 of the City of Deltona Code of Ordinances; and

WHEREAS, the City of Deltona held public hearings after due public notice to review the proposed Conditional Use application number CU14-005.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, AS FOLLOWS:

SECTION 1. In accordance with the City of Deltona Code of Ordinances, the City of Deltona City Commission hereby grants approval for Conditional Use, CU14-005, for the use of a Tattoo Parlor to be located at 577 Deltona Boulevard, subject to the following conditions of approval listed within Resolution No. 2014-29:

- 1) Tattoo parlor can only operate between the hours of 10:00 am to 10:00 pm.
- 2) No neon or neon like signs or similar apparatus can be displayed at the tattoo parlor.
- 3) All other signage, include window signs/display shall comply with Chapter 102 of the City Land Development Code.

SECTION 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND RESOLVED THIS _____ DAY OF _____, 2014,
BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA.

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney

SOURCE OF FUNDS:	N/A
ORIGINATING DEPARTMENT:	Department of Planning and Development Services
REVIEWED BY:	Chris Bowley, AICP, Director, Department of Planning and Development Services
PRESENTED BY:	Chris Bowley, AICP, Director, Department of Planning and Development Services
STAFF RECOMMENDATION:	That the Planning and Zoning Board recommend that the City Commission approve Ordinance No. 27-2014 to amend Section 110-827 of the City's Code of Ordinances.
POTENTIAL MOTION:	"I hereby move to recommend that the City Commission approve Ordinance No. 27-2014 to amend Section 110-827 of the City's Code of Ordinances."
Attachments:	Ordinance No. 27-2014

ORDINANCE NO. 27-2014

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, AMENDING SUBSECTION (C), DESIGN STANDARDS, OF SECTION 110-827, ACCESSORY USES AND STRUCTURES, OF ARTICLE VIII, SUPPLEMENTARY REGULATIONS, OF CHAPTER 110, ZONING, OF THE CODE OF ORDINANCES OF THE CITY OF DELTONA, AMENDING THE DESIGN STANDARDS FOR SHEDS; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Deltona has determined that it is advisable and in the public interest to set certain criteria for the use of sheds as accessory structures; and

WHEREAS, the City Commission of the City of Deltona finds that this ordinance promotes general welfare of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, AS FOLLOWS:

SECTION 1. Subsection (c), Design Standards, of Section 110-827, Accessory Uses and Structures, of Article VIII, Supplementary Regulations, of Chapter 110, Zoning, of the Code of Ordinances of the City of Deltona, is hereby amended to read as follows:

Sec. 110-827. Accessory Uses and Structures

(c) *Design standards.*

(1) In all residential zoning districts for single-family projects only, accessory buildings, antennas and their supporting structures, and swimming pools shall be subject to the following requirements:

a. Swimming pools shall be allowed only in the rear and side yards.

b. Transmission towers for amateur radio antennas and their supporting structures shall be allowed in accordance with Chapter 82, Communication Antennas and

Towers, Code of Ordinances of the City of Deltona, Florida, as it may be amended from time to time, and shall meet the standards as set forth in Chapter 82, division 2, Code of Ordinances, except that on single family residential and agricultural lots of five acres or more amateur radio antennas and their supporting structures shall be permitted uses up to a height of 199 feet measured from the finished grade at the base of the tower, and shall be set back from the nearest property line a distance equal to the height of the antenna plus the tower (i.e. the fall radius).

c. The zoning lot coverage for all accessory buildings and structures on a zoning lot shall be included as part of the calculation of maximum impervious areas for the particular zoning district in which the use is located. However, only half of the surface area of swimming pool basins (not including surrounding deck area) shall be considered impervious surface.

d. Accessory buildings and structures, other than lawn ornaments and fences built in accordance with this chapter, shall not be located in the front yard forward of the edge of the principal dwelling, or beyond any side street yard setback on lots of less than 2.45 acres. On lots of 2.45 acres or more, accessory uses and structures, other than swimming pools and their decks, may be located in the front yard and side street yard past the main building line provided they are set back a minimum of 100 feet from the front yard and the side street yard and 75 feet from any interior side lot line.

e. Accessory structures, including pools and screened pool enclosures, shall not be located in any platted easements.

f. Accessory buildings and structures shall not exceed the maximum height requirement for the particular district in which they are located.

g. [Reserved.]

h. [Reserved.]

i. [Reserved.]

j. Fences and walls, except those used in connection with a government use, and those required by Chapter 82, Communication Antennas and Towers, of the Code of Ordinances of the City of Deltona, Florida, shall be governed by the standards found in Article VIII, Section 110-806.

k. Up to two (2) sheds, not including other types of accessory buildings and structures, shall be permitted on a residential lot that is equal to or less than 20,000 square feet, so long as the sheds do not exceed 240 square feet in the aggregate. ~~If a shed exceeds 240 square feet in floor area, it must be constructed to follow the same~~

~~design and facade presented by the principal structure, including but not limited to: structure material, exterior finish, and roofing.~~

l. Accessory buildings and structures may be permitted up to the maximum permitted lot coverage for buildings and impervious surfaces, as appropriate.

m. ~~Of A-accessory buildings and structures, only sheds shall have a maximum height limitation of ten and one-half fifteen (15) feet from average finished grade to ridge line, or ten and one-half fifteen (15) feet from finished grade to peak on the front of the structure. An accessory shed shall not be taller than the primary structure.~~

Section 2. Codification. All Ordinances or parts of Ordinances, insofar as they are inconsistent or in conflict with the provisions of this Ordinance, are hereby repealed to the extent of any conflict.

Section 3. Conflicts. The provisions of this Ordinance shall become codified and shall be made a part of the Code of Ordinances of the City of Deltona. The sections of this Ordinance may be renumbered or relettered to accomplish such intention.

Section 4. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance, which shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its final passage and adoption.

PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA THIS _____ DAY OF _____, 2014.

First Reading: _____

Advertised: _____

Second Reading: _____

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney

PRESENTED BY:

Becky Vose, Esq. City Attorney, City Attorney's Office

STAFF

RECOMMENDATION:

The Planning and Zoning Board recommend that the City Commission approve Ordinance No. 26-2014 by creating Chapter 99 of the City's Code of Ordinances that provides regulations pertaining to the establishment of a residential prison diversion program.

**POTENTIAL
MOTION:**

"I hereby move to recommend that the City Commission approve Ordinance No. 26-2014 by creating Chapter 99 of the City's Code of Ordinances that provides regulations pertaining to the establishment of a residential prison diversion program."

Attachments:

Ordinance No. 26-2014

ORDINANCE NO. 26-2014

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, AMENDING THE DELTONA CODE OF ORDINANCES BY THE CREATION OF CHAPTER 99, RESIDENTIAL PRISON DIVERSION PROGRAMS; PROVIDING REGULATIONS FOR THE LOCATION AND OPERATION OF RESIDENTIAL PRISON DIVERSION PROGRAMS; PROVIDING REQUIREMENTS FOR ISSUANCE OF A RESIDENTIAL PRISON DIVERSION PROGRAM REGULATORY LICENSE; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes §166.01, the Municipal Home Rule Powers Act, authorizes cities to establish, coordinate and enforce the laws that are necessary for the protection of the public; and

WHEREAS, the Florida Statutes do not provide regulations for residential prison diversion programs; and

WHEREAS, it is in the best interest of the health, safety, and welfare of the citizens of the City of Deltona that residential prison diversion programs be regulated by the City; and

WHEREAS, under its home rule authority, the City of Deltona can pass legislation to regulate prison diversion programs, as long as these additional regulations are not preempted in the law and are consistent with statutory provisions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 99, “Deltona Residential Prison Diversion Programs Regulatory License Ordinance,” is added to the Code of Ordinances of the City of Deltona to read as follows:

Sec. 99-1. Findings of Fact

The City may adopt, pursuant to its police power, zoning ordinances and regulatory ordinances to protect the public health, welfare, and safety that are consistent with state and federal law, including the Fair Housing Act and Fair Housing Act Amendments. The adoption of zoning ordinances, regulatory ordinances, and land use planning are fundamental functions of local government. This chapter is enacted under the home rule power of the City and pursuant to Florida Statutes, Section 166.221.

Residential prison diversion programs are designed to provide services to people who have been convicted of a crime and would have been sent to a correctional facility by a court of law due to that conviction, but have agreed to be court-ordered to an alternative program to avoid being sent to a correctional facility. As a result, due to their status of meeting the criteria to be sent to a correctional facility, residences housing two (2) or more prison diversion candidates or parolees may pose a danger to the safety of the community and adjacent residents. The Florida Department of Corrections has reported that 37.3% of persons on parole will be returned to prison each year, because they have either been convicted of new crimes or have violated the conditions of their parole. Thus, the City does not intend to permit such uses in residential areas.

The fundamental precept of the City's Zoning Code provisions relative to residential zoning districts is that individual dwelling units and the majority of local roads serving them are designed, constructed, and intended for the occupancy and use of single-families. The City limits group residential uses in residential zoning districts through locational criteria that include, but are not limited to, boarding or rooming houses, dormitories, motels, and single-room occupancy hotels. Such uses are frequently transient and institutional in nature, differ in character, design, and function of a residential neighborhood, and have the potential to create impacts on single-family residential dwelling units and local roads.

The more on-site services a program offers, the less suitable the program is for a residential setting, and more suitable for sites that accommodate greater intensities and densities. With the addition of services and the greater need for easy-access to those services, the proposed use becomes more commercial in nature and more appropriate for a commercial setting, rather than a residential use in a neighborhood; where these services would generally already be located.

Sec. 99-2. Definition

For the purposes of this Ordinance, the following term, whether appearing in the singular or plural form, shall have the following meaning:

Residential Prison Diversion Program. A residence operated and maintained by an individual, non-profit agency, sponsoring private entity, or governmental agency to provide services to two (2) or more unrelated residents with at least one supervisor living on-premises, wherein one or more of the residents has been placed in the program via court order; or such placement is voluntarily requested by the resident for the purpose of or with the effect of avoiding being sentenced by a court of competent jurisdiction to confinement in a county jail, state Department of Corrections facility, federal corrections facility, or any other type of detention facility; and wherein the services being provided may include, but not be limited to, one or more of the following: board, lodging, meals, supervision, controlled administration of medication, counseling, group sessions, therapy, education, job skill training and other services, as needed.

Sec. 99-3. Locational and Program Standards

- a. **Location.** Residential prison diversion programs shall be allowed by Conditional Use approval in the C-2 (General Commercial), C-3 (Heavy Commercial), or I (Industrial) zoning districts.
- b. **Distance requirements.**
 1. No residential prison diversion program may operate within 1,000 feet of any school or licensed child care facility.
 2. No residential prison diversion program may operate within 1,000 feet of any public park, public playground, or public recreation center utilized by juveniles.
 3. No residential prison diversion program may operate within 1,000 feet of any other residential prison diversion program.
 4. No residential prison diversion program may operate within 1,000 feet of a single family residence.
- c. **Parking.** Parking requirements for residential prison diversion programs shall be in accordance with the City's Land Development Code regarding off-street parking and loading relating to homes for the aged, sanitariums, convalescent, or nursing homes.
- d. **Program limits.** No more than six (6) residents may be housed at the program site at one time. This does not include the residential supervisor or staff provided as part of program operations.

- e. Property standards. Residential prison diversion programs shall meet the following property standards:
 - 1. The facility shall abide by all fire safety codes for group home living.
 - 2. The facility shall provide a fully functional and safe kitchen.
 - 3. The facility shall provide each resident with adequate personal storage and living space.
 - 4. The facility shall have one sink, one toilet, and one shower for every four (4) people who reside at the facility.
 - 5. The facility shall have laundry services available on-site.
 - 6. The facility shall provide any necessary safety or security measures needed to provide for the safety of the residents and residents on adjacent properties. This may include but is not limited to installing a perimeter fence, outdoor security lighting, an alarm system or security system, or any other reasonable security measure as determined by the City.
 - 7. The facility shall not be a detriment to the health, safety, and welfare of the facility occupants or the residents on adjacent properties and shall be well maintained both internally and externally.

- f. Good Neighbor standards. Residential prison diversion programs shall provide neighbors to the facility with contact information for the designated person who will address all neighbor complaints, even if it is not possible to resolve the issue.

Sec. 99-4. Application and Residential Prison Diversion Program Regulatory License.

- a. Application. No person, non-profit agency, private entity, or governmental agency shall operate a residential prison diversion program without first obtaining a residential prison diversion program regulatory license. A person desiring to apply for such a regulatory license shall make an application in writing on a form prescribed by the City Manager, or designee.
 - 1. The application shall include the following:
 - (a) A written statement that the person, non-profit agency, private entity, or governmental agency will take reasonable safety precautions to provide for the safety of the citizens located around the program site and an itemization of the steps contemplated to reach this goal.
 - (b) A copy of any applicable state license(s) and/or documentation that the program has been contracted by an appropriate state agency to provide such services.

- (c) Copies of the licenses issued by the Florida Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling or other professional licensing board for any mental health counselors, social workers, marriage and family therapists, or other licensed professional providing services to the residents at the facility.
 - (d) Documentation that the program meets all required standards, as listed in Section 99-3.
- b. Residential Prison Diversion Program Regulatory License Issuance. As a prerequisite to the issuance of a residential prison diversion program regulatory license, an inspection shall be made of the premises by the City's fire inspector and the Volusia County Sheriff's Office.

Sec. 99-5. Residential Prison Diversion Program Regulatory License Fee

The City Commission of the City of Deltona shall annually, as a part of its budgeting process, set the amount of the Residential Prison Diversion Program Regulatory License Fee. Such fee shall be determined to generate revenue commensurate with the cost of the regulatory activity.

Sec. 99-6. Operations and Records

Each residential prison diversion program shall conform to the following operational and record keeping requirements:

- a. Each program, regardless of whether it is licensed under this article, shall create, establish and maintain a record of all workers of the business. The record shall contain the worker's full legal name and any aliases and all past or current aliases of the worker; his or her date of birth; his or her residential address; his or her telephone number (if any) and all pager numbers and other similar numbers used; his or her driver's license number and a photocopy of the license; his or her state or federally issued identification card number including the workers social security account number; the employment status of the worker including, but not limited to, whether the worker is a salaried employee, an independent contractor, a lessee, a sub-lessee, a subcontractor allowed to work at the establishment, or such other arrangement as may be in place; and a recent photograph of the worker as of the date of association with the business which accurately reflects the date on which the photograph was taken.

- b. The residential prison diversion program regulatory license holder or other designee shall be responsible for ensuring that all staff has the appropriate licenses and training required to perform the work at the program. Documentation shall be kept in the worker file.
- c. The residential prison diversion program regulatory license holder or other designee shall ensure that any resident who is required to register as a sex offender complies with the requirements of registration in accordance with 943.0435 F.S. and keep documentation of registration in the program records.

Sec. 99-7. Implementing Administrative Actions

The City Manager, or designee, shall implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules. All development orders shall be issued in a manner consistent with controlling law and rendered in appealable form with the City Clerk. Denials of development approvals shall be issued in accordance with controlling law to include, but not be limited to, Section 166.033, Florida Statutes.

Section 2. Codification. All Ordinances or parts of Ordinances, insofar as they are inconsistent or in conflict with the provisions of this Ordinance, are hereby repealed to the extent of any conflict.

Section 3. Conflicts. The provisions of this Ordinance shall become codified and shall be made a part of the Code of Ordinances of the City of Deltona. The sections of this Ordinance may be renumbered or relettered to accomplish such intention.

Section 4. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance, which shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its final passage and adoption.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF
DELTONA, FLORIDA THIS _____ DAY OF _____, 2014.**

First Reading: _____

Advertised: _____

Second Reading: _____

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney

STAFF

RECOMMENDATION:

The Planning and Zoning Board recommend that the City Commission approve Ordinance No. 10-2014 to allow for medical marijuana dispensaries within the C-1, C-2, and C-3 zoning districts, with Conditional Use approval.

**POTENTIAL
MOTION:**

“I hereby move to recommend that the City Commission approve Ordinance No. 10-2014 to allow for medical marijuana dispensaries within the C-1, C-2, and C-3 zoning districts, with Conditional Use approval.”

Attachments:

Ordinance No. 10-2014
Medical Marijuana Legislation Information

ORDINANCE NO. 10-2014

AN ORDINANCE AFFECTING THE USE OF LAND IN THE CITY OF DELTONA, FLORIDA, CREATING A NEW ARTICLE XIV, MEDICAL MARIJUANA DISPENSARIES; TO ALLOW MEDICAL MARIJUANA DISPENSARIES AS A CONDITIONAL USE IN THE C-1, C-2, AND C-3 ZONING CATEGORIES; BY SETTING FORTH SITING STANDARDS AND REQUIREMENTS FOR MEDICAL MARIJUANA DISPENSARIES; PROVIDING FOR CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the State of Florida is considering legalizing the dispensing of marijuana for medical purposes; and

WHEREAS, the City Commission of the City of Deltona has determined that it is in the best interests of the citizenry and general public to regulate the location of medical marijuana dispensaries in the event the State of Florida legalizes said dispensaries; and

WHEREAS, the City Commission of the City of Deltona has the responsibility and authority to determine what uses are best suited to particular zoning categories, as well as land use categories, within the City; and

WHEREAS, the City Commission of the City of Deltona has determined that given the potential impact on the surrounding area, that medical marijuana dispensaries should be allowed within the C-1, C-2, and C-3 zoning districts in the City, as a Conditional Use, after public hearings and findings by the Planning and Zoning Board and City Commission that said dispensaries meet the requirements for granting a Conditional Use; and

WHEREAS, the City Commission of the City of Deltona has determined that it is advisable and in the public interest to set certain distance and other siting standards in regard to the location of operation of medical marijuana dispensaries; and

WHEREAS, the City Commission of the City of Deltona finds that this ordinance promotes general welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELTONA FLORIDA, AS FOLLOWS:

Section 1. Code of Ordinances of the City of Deltona, Florida, Subpart B, Land Development Code, Chapter 110, a new Article XIV, Medical Marijuana Dispensaries, is hereby adopted to read as follows:

Article XIV: Medical Marijuana Dispensaries

Sec. 110-1400. Definition.

The term “medical marijuana dispensary” shall mean any location at which medical marijuana (by whatever name) is sold or dispensed, except for by licensed pharmacies.

Sec. 110-1401. Zoning districts where a medical marijuana dispensary is allowed.

Medical marijuana dispensaries shall be allowed as Conditional Uses in the C-1 – Retail Commercial District, C-2 – General Commercial District, and C-3 – Heavy Commercial District zoning classifications, upon approval of a Conditional Use application.

Sec. 110-1402. Requirements for operation and Conditional Use criteria.

(a) The following are requirements as to all medical marijuana dispensaries. Violation of any of the following requirements shall be punishable as a violation of this Code.

(1) *Controlled substances.* The on-site sale, provision, or dispensing of medical marijuana is prohibited, except as specifically authorized by applicable law.

(2) *Loitering.* A medical marijuana dispensary shall provide adequate seating for its patients and business invitees. The medical marijuana dispensary shall not direct or encourage any patient or business invitee to stand, sit (including in a parked car), gather, or loiter outside of the building where the medical marijuana dispensary

operates; including in any parking areas, sidewalks, rights-of-way, or neighboring properties for any period of time longer than that reasonably required to arrive and depart. The medical marijuana dispensary shall post conspicuous signs on at least three (3) sides of the building, stating that no loitering is allowed on the property.

- (3) *Queuing of vehicles.* The medical marijuana dispensary shall ensure that there is no queuing of vehicles in rights-of-way. The medical marijuana dispensary shall take all necessary and immediate steps to ensure compliance with this paragraph.
 - (4) *No Drive-through service.* No medical marijuana dispensary shall have a drive-through or drive-in service aisle. All dispensing, payment for and receipt of said medical marijuana shall occur from inside of the medical marijuana dispensary.
 - (5) *Alcoholic beverages.* No consumption of alcoholic beverages shall be allowed on the medical marijuana dispensary premises; including in the parking areas, sidewalks, or rights-of-way. The medical marijuana dispensary shall take all necessary and immediate steps to ensure compliance with this paragraph.
 - (6) *Separation distances.* A medical marijuana dispensary shall not operate within five hundred (500) feet of any school, as that term is defined in Section 1002.01 or 1003.01, Florida Statutes, as it may be amended, or another medical marijuana dispensary. Distance requirements shall be documented by the applicant and submitted to the Planning and Development Services Department with the application. All distance requirements shall be measured by drawing a straight line from the nearest property line of the pre-existing protected use to the nearest property line of the proposed medical marijuana dispensary. The applicant may request a variance from the requirements of this paragraph, as provided in the City of Deltona Land Development Code.
 - (7) *Operating hours.* Medical marijuana dispensaries shall only be allowed to operate between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday. Medical marijuana dispensaries shall not operate at any time on Sundays.
 - (8) *Growing of marijuana.* Nothing in this ordinance shall be deemed to allow or permit the growing or cultivating of marijuana in or about a medical marijuana dispensary; or at any other location within the city limits of the City of Deltona.
- (b) When considering an application for a medical marijuana dispensary, the Planning and Zoning Board must consider the Conditional Use criteria listed in Section 110-1402(a)(1)

through (8). The Planning and Zoning Board shall review the Conditional Use application and make a recommendation to the City Commission to deny the request, approve the request, or approve with conditions the request at a regularly scheduled public meeting. The Planning and Zoning Board may assign additional conditions and safeguards, as deemed necessary.

Section 2. Codification. The provisions of this Ordinance shall become codified and shall be made a part of the Code of Ordinances of the City of Deltona. The sections of this Ordinance may be renumbered or relettered to accomplish such intention.

Section 3. Conflicts. All Ordinances or parts of Ordinances, insofar as they are inconsistent or in conflict with the provisions of this Ordinance, are hereby repealed to the extent of any conflict.

Section 4. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance, which shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall take effect immediately upon its final passage and adoption.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF
DELTONA, FLORIDA THIS _____ DAY OF _____, 2014.**

First Reading: _____

Advertised: _____

Second Reading: _____

BY: _____
JOHN C. MASIARCZYK, SR., Mayor

ATTEST:

JOYCE RAFTERY, CMC, City Clerk

Approved as to form and legality
for use and reliance of the City of
Deltona, Florida

GRETCHEN R. H. VOSE, ESQ., City Attorney

MEDICAL MARIJUANA

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Florida League of Cities
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I. 2014 MEDICAL MARIJUANA LEGISLATION

“The Compassionate Medical Cannabis Act of 2014” (CS/CS/SB 1030) allows the use of low-THC cannabis to treat certain specified medical conditions such as epilepsy and ALS (Lou Gehrig’s disease). The strain of low-THC marijuana which has been legalized is popularly known as “Charlotte’s Web” and is administered in an oil or capsule form. This differs from Amendment 2, which would legalize all forms of cannabis to treat a wider variety of medical conditions. The legislation does not contain any provisions which preempt municipalities from enacting ordinances relating to medical marijuana.

The legislation provides the Florida Department of Health (DOH) rulemaking authority to establish the framework for the implementation and regulation of medical marijuana. DOH issued its most recent draft of proposed rules in mid-August. The draft rules still do not contain any provisions which preempt municipalities from enacting ordinances relating to medical marijuana. There are provisions in the draft rules which are of interest to municipalities.

- A marijuana dispensing organization facility (includes buildings where marijuana is grown as well as physically dispensed) may not be located within 1,000 feet, as measured from the primary dispensing organization structure to the nearest property line of an elementary, middle or secondary school, day care facility as defined in Section 402.302, F.S., county or municipal park, or place of worship which was in existence prior to the dispensing organization’s application to DOH.
- A marijuana dispensary must comply with current state and local building codes, fire codes, and electric codes. The previous draft included a catch-all phrase “...and other laws.” which was deleted from the most recent draft. Although the requirement only applies to the initial DOH application approval, the ambiguity may create uncertainty as to what other regulations municipalities can impose upon dispensaries.
- A marijuana dispensary must be open on a regular schedule approved by DOH. Specific weekly and daily operational time requirements have been removed.
- Allows law enforcement agencies to enter dispensing organization facilities and access to the “Compassionate Use Registry” of persons eligible for medical marijuana
- DOH will take public access, right-of-way, and parking needs into consideration when granting an application to become a dispensing organization

- The dispensary's medical director is required to respond to local municipalities regarding compliance with rules and regulations and community health and public safety concerns

During public comments at the rule hearing, questions regarding zoning and the ability of local governments to regulate medical marijuana were raised, with some advocating treating the dispensaries no different than drugstores. The concern of these advocates is local governments enacting restrictive ordinances which would effectively prohibit dispensaries from operating in city limits. DOH did not give any indication of its position on this issue. The next hearing will be on September 5.

II. AMENDMENT 2 – 2014 GENERAL ELECTION

In the 2014 general election, Florida voters will be asked to cast a “yes” or “no” vote on Amendment 2 which, per the ballot title, would allow for the “Use of Marijuana for Certain Medical Conditions.” Voters must approve the Amendment by a 60% majority. Several recent polls have shown support at or above the 60% threshold.

The Amendment does the following:

1. Authorizes use of medical marijuana
2. Specifies certain medical conditions which make a patient eligible for medical marijuana
3. Defines terms necessary for implementation and rulemaking by the Florida department of Health (DOH)
4. Requires DOH to promulgate implementing regulations within six months
5. Requires DOH to begin registering marijuana treatment centers and issuing identification cards to qualifying patients within nine months
6. Permits the Legislature to enact laws consistent with the Amendment

Absent from the text of the Amendment is any reference to the role of local government in its implementation and regulation. Since the Amendment leaves all discretion to the DOH and the Legislature on how the Amendment will be implemented, municipalities may wish to wait for guidance from the state. However, we do not recommend that approach.

Per the Amendment, two parties are involved in promulgating and implementing regulations, DOH and the Legislature. The regulatory framework provided by DOH will likely be based on the rules promulgated in implementing the 2014 “Charlotte’s Web” legislation. The Legislature’s involvement during the 2015 session will likely depend on the final rules adopted by DOH. Further clouding the issue is the 2014 gubernatorial race, with one candidate in favor of the Amendment and one candidate opposed. Depending on the outcome, the regulations promulgated by DOH could differ greatly.

III. ISSUES FOR MUNICIPALITIES TO CONSIDER

The 2014 “Charlotte’s Web” legislation and the possible passage of Amendment 2 provide much uncertainty to municipalities as to how medical marijuana will be regulated on a statewide level and what role local governments will be able to play (or be preempted) in its regulation in the future. In the event a municipality wants enact any ordinances prior to the rules being issued by the Department of Health (DOH) or any further action by the Legislature, here are some concepts to consider:

- **Prohibition**: A complete prohibition on the operation of “medical marijuana treatment centers” as defined in Amendment 2 and “dispensing organizations” as defined in the 2014 legislation in s. 381.986, F.S.
- **Impacts**: The locations of marijuana cultivation and dispensaries may impact municipalities in several ways:
 - Increased traffic flow, interference with the adjacent right-of-way, and limited parking similar to past experiences with pain clinics.
 - The odor of marijuana is very strong. All buildings in the area surrounding the dispensary could be negatively affected.
 - Marijuana dispensaries in other states have been unable to deposit cash in banks due to the banks’ concerns over violating federal money laundering laws. Any business with a large amount of cash on hand risks criminal activity such as robberies and burglaries.
- **Zoning**: If a municipality does not change its zoning ordinances, marijuana dispensaries are likely to be located in areas where medical offices and pharmacies currently exist. Many cities in other states have restricted dispensaries to areas which have been zoned for industrial use. While DOH has promulgated a draft rule which restricts a marijuana dispensing organization from being located within 500 feet of a school, a municipality may want to go beyond this limitation and add additional setback requirements. Municipalities may want to review the zoning requirements in adult entertainment ordinances for guidance.
- **Security standards**: Although municipalities are preempted from adopting security standards for convenience stores pursuant to s. 812.1725, F.S., there are no such preemptions in Amendment 2, the 2014 legislation, or DOH draft rules. The state standards for convenience store security in s. 812.173, F.S. may be a useful template for any municipal ordinances regulating marijuana dispensaries
- **Permitting**: In addition to other restrictions, municipalities in other states have added a licensing requirement for medical marijuana dispensaries. The municipalities have then restricted the number of permits which may be issued at any one time. Municipalities may want to review the permitting requirements in adult entertainment ordinances for guidance.

- **Smoking bans:** As stated above, the smoke and strong odor of marijuana can be a nuisance. No law or draft rule prohibits municipalities from treating marijuana in the same manner as is currently allowed for tobacco products. In fact, the website of the group pushing Amendment 2 contains specific language that their intent is for the smoking medicinal marijuana to be treated in a manner identical to tobacco. While the opinion of this group are neither law nor rule, the stated intent of the group is positive for municipal regulation authority.
- **Utility impacts:** Other states have reported the amount of electricity needed to grow marijuana has, in some circumstances, significantly increased demand on the power grid. Municipalities which operate municipal utilities may want to consider reviewing current policies on the use of electricity. Municipalities may also want to consider the existing utility infrastructure in making a determination of where dispensaries may be located.
- **Fire:** The processing equipment and contents of marijuana dispensaries are extremely flammable. Municipalities may want to consider setback requirements and the impact on fire services when making decisions on where dispensaries can be located.
- **Licensing requirements / Fees:** In a manner similar to the establishment of security requirements, municipalities may want to consider any additional licensing requirements and fees required for dispensaries to operate in city limits. While cities may not levy sales taxes on marijuana as they have been permitted to do in Colorado, other fees and business taxes may be available for municipalities to pursue.
- **Drug testing of employees:** The Supreme Courts of several states have held because marijuana is still a banned substance under federal law, an employee may be discharged for a positive marijuana drug test even if the employee is permitted to use medicinal marijuana under state law. Florida courts have not had the opportunity to consider the matter. Although these decisions are not binding in Florida, they may be persuasive when such a case arises. Municipalities may want to amend their employment policies consistent with these decisions.
- **Law enforcement:** The initial draft of DOH rules allow law enforcement agencies to enter marijuana dispensaries and access the “Compassionate Use Registry.” Municipal law enforcement agencies may want to consider creating policies and procedures for when and how to enter a dispensary or access the Registry.

Several municipalities have already enacted ordinances related to medical marijuana dispensaries. Copies of these ordinances can be obtained by contacting Ryan Padgett, Assistant General Counsel, Florida League of Cities.