



Zoning Text Amendment #2023-00002

Healthcare Uses

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| Issue: (A) Initiation of a text amendment and (B) public hearing and consideration of a text amendment to the zoning ordinance to amend healthcare-related use definitions in Article II. | Planning Commission Hearing: | March 30, 2023 |
| | City Council Hearing: | April 15, 2023 |
| Staff: Tony LaColla, AICP, Division Chief tony.lacolla@alexandriava.gov Christina Zechman Brown, Deputy City Attorney christina.brown@alexandriava.gov Mary Christesen, Zoning Manager mary.christesen@alexandriava.gov Ann Horowitz, Principal Planner ann.horowitz@alexandriava.gov Sam Shelby, Principal Planner sam.shelby@alexandriava.gov | | |

PLANNING COMMISSION ACTION, MARCH 30, 2023: On separate motions both made by Vice Chair McMahon and seconded by Commissioner Brown, the Planning Commission moved to initiate and recommend approval of ZTA #2023-00002. The motion carried on a vote of 4 to 0 with Commissioners Lyle, Ramirez and Manor absent.

Reason: The Planning Commission agreed with staff’s analysis.

Discussion: Chair Macek asked staff to clarify why the terms dental and psychology services were not included in the updated definitions. He and Vice Chair McMahon discussed whether the revised definitions should include additional types of healthcare practices. Staff replied that the revised definitions were not meant to exclude any types of healthcare practices and that the proposed terminology “other health-related services” was meant to be all-encompassing. Staff also explained that a guidance memo could be created to assist staff in applying the new definitions. Chair Macek confirmed that staff could return to the minutes of the meeting for further guidance as to what was intended with the amendments.

Speakers:
 Emily Eckert, representing the Alexandria Commission for Women, spoke in support of the text amendment.

LaTwylya Mathias, executive director of Progress Virginia, spoke in support of the text amendment.

Lexi White, representing REPRO Rising Virginia and member of the Alexandria Commission for Women, spoke in support of the text amendment.

Galina Varchena, representing Birth in Color RVA, spoke in support of the text amendment.

I. Issue

On June 28, 2022, City Council adopted Resolution #3087 which asked "... that the City Manager work with the Director of Planning & Zoning, in consultation with the City Attorney, to review existing land-use regulations regarding the operation of a clinic providing abortion services, and bring forward for consideration Zoning Text Amendments to ensure unfettered administrative approval in any commercial or mixed-use zone."

Staff has identified inconsistencies in healthcare-related use definitions that should be amended to ensure that medical offices and clinics, including those that provide abortion services, can be approved by-right in commercial and mixed-use zones.

II. Background

The Zoning Ordinance contains numerous healthcare-related use terms but the two relevant to this amendment are "health profession office" and "medical care facility." On October 17, 2020, City Council approved Zoning Text Amendment #2020-00005 which included a set of minor updates to the Zoning Ordinance. The amendment included the following changes to the term "medical care facility:"

Any installation, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of ~~two or more non-related~~ mentally or physically sick or injured persons, or for ~~the care of two or more non-related~~ persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled; including but not limited to emergency medical treatment, health professional office, medical laboratory, intermediate care facility, extended care facility, mental hospital, mental retardation facility, medical school, outpatient surgery centers, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation, and trauma units, substance abuse outpatient or day programs, and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include ~~a health profession office, first aid station for emergency medical treatment,~~ housing for the elderly, ~~medical laboratory, hospital,~~ nursing home or a facility which has as its primary purpose residential accommodation. Nothing in this definition is intended to interfere with or restrict the use of a dwelling unit by a family as that term is defined in this article, wherever such use is allowed in the zones.

With this amendment, staff intended to distinguish "medical care facilities" as facilities that can include a number of land uses, including health profession offices. Instead, staff, with this amendment, inadvertently blurred the distinction between a health profession office and a medical care facility.

For reference, the Zoning Ordinance defines health profession offices as “the use of space by individuals licensed in the Commonwealth of Virginia to practice medicine, dentistry, psychiatry, psychology, nursing, massage therapy, physical therapy or other health-related professions on an outpatient basis.” The Zoning Ordinance lists health profession offices as permitted uses in most commercial and mixed-use zones except those which require ground floor retail uses. Alternatively, it lists medical care facilities as special uses in most commercial and mixed-use zones. The reason for the distinction is that medical care facilities have the potential for greater land use impacts than health profession offices.

In practice, staff has classified health profession offices as establishments that primarily serve as a traditional doctor’s office with one or more practitioners. They may include other accessory healthcare-related uses. Examples of health profession offices include urgent care clinics, primary care clinics, massage therapy offices, abortion service providers and others.

Staff has classified medical care facilities as larger establishments that function more like a traditional hospital. In general, these facilities are significantly larger than health profession offices and may include emergency services. One example of a recent medical care facility is the INOVA health complex which is under construction at the Oakville Triangle site.

III. Proposed Text Changes

Staff proposes amendments to the health profession office and medical care facility use definitions that clearly distinguish the two. Because the medical care facility use definition dates back at least to the 1963 Zoning Ordinance, staff proposes updates to modernize the language. Staff has included the phrase “under common ownership or control” in this definition to clarify that a commercial building with a number of health profession offices would not be classified as a medical care facility. Staff also proposes removing any reference to licensing as these are not related to land use impacts and therefore should not be included in the Zoning Ordinance.

In response to Council’s resolution, staff also proposes including the term “abortion services” in both the health profession office and medical care facility definitions. This way, by-right approval of abortion services would not be contingent on a staff determination and therefore less open to appeals. Medical care facilities would still require SUP approval in most zones. Staff proposes retaining the SUP requirement for a medical care facility as one could have the potential for greater land use impacts based on its larger size and greater number of employees and patients. Staff’s proposed amendment clarifies that a medical care facility may offer abortion services. Text changes can be found in Attachment #1 of this report.

IV. Recommendation

Staff recommends that the text amendments contained in Attachment 1, be initiated and recommends approval of the attached Zoning Ordinance text changes.

Staff: Tony LaColla, AICP, Division Chief
Christina Zechman-Brown, Deputy City Attorney
Mary Christesen, Zoning Manager
Sam Shelby, Urban Planner

Attachment #1

2-174 – Health profession office.

A building or portion thereof with a gross floor area of 20,000 square feet or less used for medical, psychiatric, surgical, ~~The use of space by individuals licensed in the Commonwealth of Virginia to practice medicine, dentistry, psychiatry, psychology, nursing, massage therapy, or physical therapy,~~ **abortion services** or other health-related ~~services professions~~ **primarily** on an outpatient basis.

2-174 – Medical care facility.

Buildings or portions thereof with a gross floor area greater than 20,000 square feet used for medical, psychiatric, surgical, massage or physical therapy, abortion services or other health-related services, under common ownership or control, primarily on an outpatient basis. This term shall not include a nursing or convalescent home or hospice or a continuum of care facility. ~~Any installation, place, building, or agency, whether or not licensed or required to be licensed by the State Board of Health or the State Hospital Board, by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of mentally or physically sick or injured persons, or for persons requiring or receiving medical, surgical or nursing attention or service as acute, chronic, convalescent, aged, or physically disabled; including but not limited to emergency medical treatment, health professional office, medical laboratory, intermediate care facility, extended care facility, mental hospital, mental retardation facility, medical school, outpatient surgery centers, birthing, diagnostic imaging, radiation therapy, dialysis, medical/physical rehabilitation, trauma units, substance abuse outpatient or day programs and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated by a local government unit. This term shall not include housing for the elderly, nursing home or a facility which has as its primary purpose residential accommodation. Nothing in this definition is intended to interfere with or restrict the use of a dwelling unit by a family as that term is defined in this article, wherever such use is allowed in the zones.~~

Hello, my name is LaTwyla Mathias, and I am the executive director of Progress Virginia. I am here today to express my unreserved support for this amendment. Everyone should have access to abortion and by allowing abortion clinics by right, we will be closer to making that a reality for everyone. In a world where many states and communities are making it harder and harder to access safe abortion care, we must be a place everyone can choose how and when to become a parent for themselves. That means ensuring that abortion is affordable, accessible, and available when needed. I urge the commission to pass this amendment and allow abortion clinics by right.

Testimony in Support of Zoning Text Amendment #2023-00002 - To be delivered at the Planning Commission meeting on 3/30/23

Good evening. My name is Emily Eckert and I am here speaking on behalf of the Alexandria Commission for Women. As the Planning Commission is likely aware, on June 24, 2022, the United States Supreme Court released its decision in *Dobbs v Jackson Women's Health Organization*, concluding that "the Constitution does not confer a right to abortion...and the authority to regulate abortion is returned to the people and their elected representatives." Within days of this decision, the Alexandria City Council passed Resolution 3087, which the Commission for Women was proud to support. Among other things, Resolution 3087 directed the City Manager to work with the Director of Planning and Zoning, in addition to the City Attorney, to review existing land-use regulations regarding the operation of abortion clinics and to bring forth recommendations for amending the zoning text to ensure unfettered administrative approval for abortion clinics in any commercial or mixed-use zones. Following this directive, the staff have brought forth Zoning Text Amendment #2023-00002, which would more clearly delineate between "medical care facilities" and "health professional offices" and clarify that abortion clinics are a "by-right use" authorized under both definitions.

The Commission for Women strongly supports the zoning amendments proposed by the staff and believes these amendments will make it clear that abortion clinics are welcome here. Not only would the establishment of new clinics benefit our friends and neighbors throughout the Commonwealth, but it would also benefit people living in our border states of West Virginia, Kentucky, Tennessee, and North Carolina, where abortion has either been completely banned or severely restricted.

The Commission for Women urges the Planning Commission to recommend these amendments for consideration by City Council. Thank you.

Emily Eckert, MS
Resident, City of Alexandria
Commissioner, Alexandria Commission for Women