

**CITY OF HAMILTON**

**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Parking and By-law Services Division**

<b>TO:</b> Chair and Members Planning Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> May 17, 2011	
<b>SUBJECT/REPORT NO:</b> Methadone Clinics (PED11096)(City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Tim McCabe General Manager Planning and Economic Development Department	<b>PREPARED BY:</b> Glyn Wide 905-546-2424 Ext 5413 Marty Hazell 905-546-2424 Ext 5413
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- a) That staff continue to address any nuisance/behavioural issues associated with methadone clinics through the use of existing municipal by-laws; and,
- b) That the item titled "Regulations respecting methadone clinics" be identified as complete and removed from the Planning Committee's Outstanding Business List.

**EXECUTIVE SUMMARY**

On January 19, 2010, the former Economic Development and Planning Committee directed staff to "further investigate the ability to regulate methadone clinics, and report back to the Economic Development and Planning Committee".

This Report responds to that direction and recommends that staff continue to address any issues through the use of existing municipal by-laws.

***Alternatives for Consideration – Not Applicable***

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial/Staffing/Legal:** N/A

**HISTORICAL BACKGROUND** (Chronology of events)

In Information Report BOH07017 dated 12<sup>th</sup> April 2007, Dr. Elizabeth Richardson reported to the Board of Health on the issue of methadone clinics. The following is an excerpt from that report:

*“Some Board of Health members have expressed a desire to regulate or otherwise direct the location and/or operations of providers of methadone. Given that methadone is a federally regulated controlled substance, that physicians who prescribe this must apply for a specific federal exemption and, in the case of MMT, provide evidence of additional training to the CPSO, and that the provision of MMT is a medical act not unlike any other doctor-patient encounter, the scope for municipal action with regard to methadone, beyond supporting and encouraging those who may benefit from drug treatment to access ADGS and other treatment services, currently appears limited.”*

(Note: MMT (methadone maintenance therapy), CPSO (College of Physicians and Surgeons of Ontario), ADGS (Alcohol, Drug and Gambling Services))

On January 19, 2010, the former Economic Development and Planning Committee, and subsequently City Council on January 27, 2010, approved the following motion:

*“Whereas, BOH07017 stated that should additional exploration of licensing as a means to regulate the location or nature of services offered by physicians (Methadone clinics) be required, this could be referred to the General Manager of Planning & Economic Development, and;*

*Whereas, there continue to be a number of community issues around the setup and operation of methadone clinics in the City of Hamilton;*

*Therefore,*

Request that Municipal Law Enforcement staff, in consultation with Legal, Public Health and any other required staff, further investigate the ability to regulate methadone clinics, and report back to the Economic Development and Planning Committee.”

**POLICY IMPLICATIONS**

N/A

**RELEVANT CONSULTATION**

Public Health, Legal Services and the Hamilton Police Service were consulted in the preparation of this Report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

Methadone and methadone clinics are described in the April 12, 2007 Information Report BOH07017 (Methadone Clinics). While concerns have been expressed respecting behavioural problems and crime related incidents associated with patrons of these establishments, neither Municipal Law Enforcement staff nor the Hamilton Police Services can provide any direct correlation between increased crime/behavioural issues and methadone clinic locations.

Given that methadone treatments are a medical practice, not unlike any other doctor-patient encounter, staff concludes that attempting to regulate methadone clinics through either licensing or zoning would not be appropriate:

**Licensing:** The City of Hamilton is authorized under the Municipal Act, 2001 to license classes of businesses, for example, food premises, residential care facilities and adult entertainment establishments. To do so, the class must be defined unambiguously according to the particular service the businesses within the class provide. The service provided by methadone clinics is difficult to differentiate from the service provided by other medical clinics. Making such a distinction on the basis of the disability, namely addiction, of the businesses' clientele could breach the Canadian Charter of Rights and/or the Ontario Human Rights Code.

**Zoning:** From a zoning perspective, methadone clinics are medical offices or medical clinics. Zoning By-laws do not regulate medication prescribed by a doctor within any medical office or clinic. Using zoning in an attempt to control behavioural issues associated with a methadone clinic's patients would be, essentially, "people zoning". This was the conclusion (stated below) of the Ontario Municipal Board when it quashed Oshawa's Interim Control By-law prohibiting the use of land, buildings or structures for the purposes of a clinic for

the treatment of opioid dependent persons and/or other narcotic dependent persons:

*“In effect, what the City has done is ban a specific type of medical clinic not based on the function of the clinic but on those who will use clinic and what their medical condition is. The Board . . . finds that this is not a valid planning rationale. (Loralgia Management Ltd. v. Oshawa (City) (Ontario Municipal Board, 2002))”*

As with licensing, regulating methadone clinics through zoning could breach the Canadian Charter of Rights and/or the Ontario Human Rights Code.

In reviewing possible controls for methadone clinics, staff also examined the experiences of other cities. The Cities of Burlington, Kitchener, London and Windsor were consulted.

In Kitchener, where a methadone clinic was identified as a serious concern for the surrounding neighbourhood, the City has not pursued zoning or licensing. Instead, a team made up of the City’s municipal by-law staff, police and representatives from other agencies have worked with the methadone clinic and the neighbours to improve the Community’s understanding of the program and to arrive at mutually acceptable solutions to issues and problems. Since engaging the Community and the clinic operator there have been no issues brought forward by the Community for many months.

Burlington has ceased any action with respect to a pain clinic located in Aldershot as there have been no public concerns expressed to Council since May 2009 and a Neighbourhood Advisory Committee advised that "no problems have resulted from the establishment of the clinic and that it is providing a valuable service."

London has gone ahead with an Interim Control By-law prohibiting clinics primarily dispensing methadone. The Interim Control By-law has been appealed to the Ontario Municipal Board.

Windsor, despite advice that this may contravene the Ontario Human Rights Code, is proposing changes to its Official Plan and Zoning By-law to restrict methadone clinics to certain zones.

#### **ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

***Healthy Community***

- ◆ an efficient and effective By-law enforcement program contributes directly to the City's goals for a healthy and safe community and positively affects quality of life for residents

**APPENDICES / SCHEDULES**

GW/MH:dt