

Ontario Human
Rights Commission

Office of the Chief Commissioner

180 Dundas Street West, 9th Floor
Toronto ON M7A 2R9
Courier postal Code: M5G 1Z8
Tel.: (416) 314-4537
Fax.: (416) 314-7752

Commission ontarienne
des droits de la personne

Cabinet de la commissaire en chef

180, rue Dundas ouest, 9^e étage
Toronto ON M7A 2R9
Code postal pour livraison : M5G 1Z8
Tél. : (416) 314-4537
Téléf. : (416) 314-7752



February 24, 2012

VIA Email and Canada Post

Mayor Joe Fontana, Chair Bud Polhill, and
Members of the Planning and Environment Committee
London City Hall
300 Dufferin Avenue
P.O. Box 5035 N6A 4L9

Your Worship, Chair Polhill, and Committee Members,

**Re: Proposed Official Plan and Zoning By-Law Amendment; Methadone Clinics
and Pharmacies, File #OZ-8004**

I am writing to comment on proposed amendments to the City's Official Plan and Zoning By-Law. As you consider these amendments, the Ontario Human Rights Commission (OHRC) would like to outline some human rights principles that may affect your decision, and to ask some questions.

The City has done extensive research on issues relating to clinics and pharmacies that provide methadone treatment to members of the community. I commend the City for making effective service delivery to people who need methadone treatment a central goal in its work. However, I am concerned that elements of the proposed amendments may actually work against this goal, and against the human rights of persons with disabilities who require methadone treatment.

The proposed amendments limit how methadone services are provided for people with addictions. These amendments are governed by section 1 of the *Ontario Human Rights Code* ("the Code"), which prohibits discrimination in services against people with disabilities, including addictions.

While the City considers the proposed amendments, it must also consider its obligations under the *Code*. Consistent with the *Code* and the Supreme Court of Canada's 1999 "Meoirin" decision (*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3), the City:

- Must not discriminate against people with addictions. If amendments to the official plan or bylaw target or have an adverse impact on people with addictions, those amendments are illegal unless they were adopted in good faith and are necessary to accomplish a legitimate planning purpose.

- Must make sure that it makes all possible efforts, short of undue hardship, to accommodate the needs of people with addictions.

This approach was also supported by the Ontario Municipal Board in *Kitchener (City) Official Plan Amendment No. 58*, [2010] O.M.D.B. No. 666, 64 O.M.B.R. 263. The OMB stated that a municipality that wants to justify a discriminatory bylaw must be able to show that the bylaw was established in good faith, was reasonable, and that real and substantial efforts were made to accommodate the needs of persons who were adversely affected.

This is the law – but it also makes good sense. While mental health disabilities are commonplace in our communities, people with mental health disabilities (including addictions) face many barriers, both individual and institutional, that prevent them from fully taking part in society. These barriers result largely from negative societal attitudes about mental illness, and contribute to experiences of systemic inequality, including lack of access to appropriate treatment and support services. Discrimination can compound the effects of living with addiction disabilities by making it harder to seek treatment, triggering or making worse mental health disabilities and addictions, and making it harder to recover by limiting available supports.

People zoning

The OHRC partners with individuals and communities throughout the province to end discrimination and to break down barriers that vulnerable groups face. One such barrier is “people zoning.”

In the *Kitchener* case, the OMB examined the issue of “people zoning”:

...when asked why counselling services were also being banned from [a particular] area, the City’s planner replied that the community did not want social service users walking through the neighbourhood to counselling: “That would add to the negative social environment.” That left little doubt that the focus was not on the uses, but the users.

We want to work with the City to make sure that any amendments it makes to its Official Plan and Zoning Bylaw do not “people zone.” We want to make sure that among other things, general zoning decisions, gross floor area requirements and minimum separation distances are not used in a way that violates the *Code*. These tools should neither target, nor have a discriminatory impact on people with addictions. There needs to be a genuine planning purpose for all decisions, and the City should work to ensure that the needs of people with addictions are accommodated in any planning changes it makes.

General zoning decisions

The City proposes to zone methadone clinics and pharmacies differently than standard clinics and pharmacies. We encourage the City to consider:

- Is this more restrictive zoning based on any discriminatory views about clients, instead of on legitimate planning purposes?

- Is the “cutoff” system – where a standard clinic can provide methadone services to no more than 30 clients per day – arbitrary?
- In what ways might the zoning of methadone clinics and pharmacies limit the availability of methadone services to people with addictions?

Gross floor area requirements

The City proposes to implement a gross floor area requirement so that methadone clinics must reserve at least 15% of their gross floor area for waiting room space. This limitation does not appear to apply to any other type of facility governed by the Zoning Bylaw. We encourage the City to consider:

- Are these requirements based upon any discriminatory views of client behaviour, instead of legitimate planning practices?
- Has the City considered how these gross floor area requirements will affect the availability of both current and future methadone services to people with addictions? For example, how many buildings exist in which 15% or more of their gross floor area is designed for waiting space?

Minimum separation distances

Arbitrary separation distances can lead to breaches of the *Code*. Many municipalities try to use minimum separation distances as a way to manage “overconcentration” of some types of services within one neighbourhood. Minimum separation distances limit service options and can have a negative impact on the people who rely on these options.

The City is proposing that methadone clinics and pharmacies must be 300 metres from schools, libraries, arenas, pools, and the Western Fairgrounds. We encourage the City to consider:

- Is the minimum separation distance based upon any discriminatory views of client behaviour, instead of legitimate planning practices?
- What is the rationale for a 300 metre separation distance? Is it arbitrary?
- What is the basis for the decision to focus on separation specifically from schools, libraries, arenas, pools, and the Western Fairgrounds?
- How will this minimum separation distance affect the availability of methadone services to people with addictions?
- What will happen to existing clinics and pharmacies that do not meet this requirement?

Impact assessment

As noted above, the City has a duty to consider the impacts of any amendments on people with addictions, and has a duty also to accommodate their needs.

We encourage the City to:

- Include references to the *Code* in any amended form of the Official Plan and bylaw. These references educate the public about their rights under the *Code*, and reaffirm the City’s commitment and understanding that nothing in its Official Plan or bylaws can contravene the *Code*.

- Make sure that people with addictions who rely on methadone receive uninterrupted and convenient access to the services that they need.
- Make sure that public meetings and discussions do not discriminate or subject Code-protected groups to unwarranted scrutiny or personal attack. For example, it is important to avoid using or condoning stereotypes about people who use methadone, such as their being undesirable, prone to criminal behaviour, or not part of the community. We trust that, at meetings such as the one you will hold on Monday, you will interrupt and address biased commentary, and redirect discussion to legitimate planning issues as the *Planning Act* requires.

Legitimate planning purposes

Amendments to Official Plans and zoning bylaws must meet legitimate planning purposes. We encourage the City to carefully examine the amendments' goals, and make sure they relate to planning issues and could not better be met through other regulatory tools.

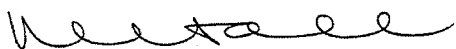
The OHRC has just released a guide for municipalities *In the zone: Housing, human rights, and municipal planning*. While the focus is on housing, the human rights principles and recommendations are also relevant to the service context. For example, you may wish to refer to sections on discriminatory neighbourhood opposition, on avoiding discrimination and harassment at community meetings, and on the concept of people zoning. The guide is available online on the OHRC website at: www.ohrc.on.ca/en/resources/Guides/inthezone.

Moving forward

As you consider these amendments, I encourage you to consider the human rights impacts on the vulnerable people who already live and use services in your community, whose lives will be affected by the decisions you make. Reviewing these bylaw amendments through a human rights lens can help you make sure vulnerable people feel welcome in your neighbourhoods.

The OHRC is available to assist you with this issue. For more information on human rights and planning, please contact Margaret Flynn at 416-326-9858 or via email at Margaret.Flynn@ohrc.on.ca.

Yours truly,



Barbara Hall, B.A, LL.B, Ph.D (hon.)
Chief Commissioner

Cc: Honourable Deb Matthews, Minister of Health and Long Term Care
Eric Lalonde, Planner, City of London
Margaret Flynn, Counsel, OHRC