

Committee worried proposed methadone bylaw could land them in court

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March 7, 2012

Committee worried proposed methadone bylaw could land them in court

By Sean Meyer/London Community News

Although councillors want to see rules put in place surrounding the licensing of methadone clinics and pharmacies, they want to make sure the city doesn't end up in court over any bylaw it creates.

With that in mind, members of the Public Safety Committee voted Tuesday (March 6) to send proposed licensing provisions back to administration for further discussion around several key issues. While some issues include language in the bylaw and the definition of ancillary use, the key concern was around whether the city had the right to license methadone pharmacies and clinics at all.

Ward 2 Councillor Bill Armstrong was just one of the members who wanted to be sure of the city's position and therefore supported referral of the issue back to staff for a report at the committee's next meeting in June. The Public Safety Committee only meets on a quarterly basis, although special meetings could always be held in the future.

"One of the questions I have is whether we really have the right to regulate pharmacists and what they can dispense. That troubles me," Armstrong said. "From a legal perspective, I'm not sure that we can. I am going to need some convince me on that one. We don't want to spend the next five years in a courtroom."

Mayor Joe Fontana was another who, although in support of the idea of licensing, said he wanted to make sure any bylaw was not only balanced, but legally appropriate as well.

"I think we need a licensing bylaw and I think the world balance is appropriate," Fontana said. "What we want a bylaw that is constitutional, but firm and defensible. If we need a little more time to get it right, so be it."

Orest Katolyk, the city's manager bylaw enforcement, explained the basis of the licensing bylaw to the committee members.

Katolyk said the licensing regulations focus on issues such as a daily log of clients to ensure the 30-client limit while not breaking any points of confidentiality, a security plan based on Crime Prevention Through Environmental Design (CPTED) regulations and an annual meeting between stakeholders and the surrounding community.

The issue of authority wasn't the only one on the minds of the committee or the several community voices that spoke out during the public participation portion of the meeting. Two of those voices, although paid to be at the meeting, spoke the loudest against not necessarily any bylaw, but certainly the current one as it has been laid out.



Barnet Kussner, a lawyer representing the pharmacist/owners of the 24 Shoppers Drug Mart franchises in the city (of which only one currently dispenses methadone), and Alan Patton, lawyer for Ontario Addiction Treatment Centre, the largest owner and operator of methadone clinics in Ontario, both spoke to the committee, focusing on two key issues.

For Kussner, the greatest issue was the proposed bylaw's definition of an ancillary use being that of one that issues 30 methadone prescriptions per day. Kussner said his client's chief concern was that the definitions in the bylaw, as they currently stand, are simply too broad to be effective.

"If you do the math, 30 clients per day represents seven per cent of the prescription business," Kussner said. "In our respectful submission, it would be unprecedented, unreasonable and an unwarranted interference with a lawful business operation to treat a mere seven per cent to not only as exceeding the threshold, but to use that seven per cent as the defining characteristic of the business."

John Fleming, director of planning, explained the 30-client limit was just one of the issues discussed during the creation of both the zoning and licensing bylaws around methadone. Fleming said any number would be debated, but that after consultation with the public and other knowledgeable professionals, the 30-prescription limit was seen as being balanced and appropriate.

"Some of the regulations indicate it is between six and 10 minutes to dispense methadone," Fleming said. "If we even take the low end of six minutes, times 30, we are talking about 180 minutes, in the neighbourhood of three hours. That to me sounds reasonable, and some people would argue too high a level for ancillary."

Patton said his client was concerned the bylaw, as written, doesn't prevent the city from collecting patient names and that several terms such as clients and patients need further clarity.

As it stands currently, Patton said the bylaw just doesn't work.

"This bylaw is flawed, is probably illegal on a number of grounds," Patton said. "It may be a work in progress, but it is nowhere close to being a sustainable bylaw."

Although both Kussner and Patton said there has been no defined reason or issue for creation of any bylaw, Fleming said it was the fact the province turned over the dispensing of methadone to the private sector, without providing adequate regulations, is exactly why rules need to be put in place.

"That is the nub of the issue, the way that these services are being delivered are not necessarily beneficial to those they are intended to service, in some cases," Fleming said. "I think it is important to recognize they aren't frustrated in operating, but they are run in a positive way for those who use them and the neighbourhoods that surround them."