DATE: December 7, 2015 **REPORT NO. CD2015-220**

TO: Chair and Members
Committee of the Whole

FROM: Gregory Dworak, General Manager
Community Services

1.0 TYPE OF REPORT **CONSENT ITEM [ ]**
ITEM FOR CONSIDERATION [X]

2.0 TOPIC
Update - Methadone Maintenance Treatment (MMT) Clinics and Dispensing Pharmacies [Financial Impact-None] (CD2015-220)

3.0 RECOMMENDATION

THAT Staff Report CD2015-220, regarding an update on regulating Methadone Maintenance Treatment (MMT) Clinics and Dispensing Pharmacies under the *Planning Act* BE RECEIVED for information, with copies of the Staff Report to be forwarded to MPP Dave Levac and the Minister of Health and Long-Term Care.

4.0 PURPOSE

The purpose of this report is to address concerns raised by Council on September 21, 2015 regarding Methadone Clinics in Brantford, including the increased number of clinics, their impacts and any associated recommendations.

5.0 BACKGROUND

Appendix “C” provides the previous report on methadone clinics (CD2014-039).

On September 21, 2015 the following resolution of Council was passed:

WHEREAS the Ministry of Health has allowed private methadone clinics to open in communities in Ontario; and

WHEREAS there has been an increase in the number of clinics that offer different services to their clients; and

WHEREAS businesses, services and the public are negatively impacted by some of the clients that use the clinics; and

WHEREAS the Downtown Brantford Business Improvement Area Board of Management is concerned about the increase in the number of clinics and the negative impact these have on the downtown image and the reputation to conduct business;

NOW THEREFORE BE IT RESOLVED:

A. THAT staff INVESTIGATE the increase in methadone clinics in the downtown area and the negative impact this is having on neighbouring businesses, services and the public, with input from a reputable clinic that dispenses methadone, and report back to Council in one meeting cycle with recommendations to address; and

B. THAT Dave Levac, MPP, Brant and the Minister of Health BE MADE AWARE of these concerns.

This report has been prepared in response to Council's recommendation above. A copy of this report will be forwarded to Dave Levac, MPP, Brant and the Minister of Health and Long-Term Care.

6.0 CORPORATE POLICY CONTEXT

Community Strategic Plan 2014-2018
High Quality of Life and Caring for All Citizens

Long Term Desired Outcome

- Brantford will be recognized as a safe and healthy community - one that promotes and enables the well-being of its citizens, and supports access of all citizens to a full range of health and community services

- Brantford will be known as a community with a social conscience – one that supports those in need (including, for example, children, youth, seniors, people with disabilities and marginalized populations).

7.0 INPUT FROM OTHER SOURCES

The request to address the issue of methadone maintenance treatment facilities originates with the Downtown Brantford Business Improvement Area (DBBIA). The Legal and Real Estate Services Department was consulted in the preparation of this report and Brantford Police Services contributed through their involvement with the Downtown Action Committee. By-law Enforcement and Licensing also participated in the report preparation. Council directed staff to consult with and receive input from a methadone clinic operator in Brantford. Comments from William Brown, Pharmacist at Grand River Pharmacy/East Brant Clinic are therefore included in the analysis. The Brantford Clinic/Life Care Medical Pharmacy at 205 Colborne Street was also contacted, but declined providing comment.

8.0 ANALYSIS

8.1 Methadone Maintenance Treatment (MMT) in Brantford - Update

Brantford has both MMT clinics and methadone dispensing pharmacies. Any pharmacy can dispense methadone. Many stand-alone clinics, but not all, include a pharmacy to dispense methadone. Over the past year the number of MMT clinics has increased from 2 to 5 stand-alone clinics (See Appendix A - Map 1), all located in Ward 5. There are three (3) methadone clinics located within the Downtown Brantford Business Improvement Area and two (2) methadone clinics are located east of Alfred Street along Colborne Street as follows:

- 95 Darling Street (Victoria Park Clinic)
- 193 Colborne Street (ACT Clinic)
- 205 Colborne Street (The Brantford Clinic)
- 367 Colborne Street (Grand River Community Health Centre)
- 423 Colborne Street (East Brant Clinic)

All of the MMT clinics are located in the Core Commercial Zone (C1) or General Commercial Zone (C8) under the definition of “medical clinics”. There is no distinction made between types of clinics in the Zoning By-law.

The following are comments from William Brown (BScPhm RPh) – Pharmacist at Grand River Pharmacy/East Brant Clinic. These comments were gathered in response to Council’s request for input from a “reputable clinic that dispenses methadone”. *The views and opinions below are those of Mr. Brown and do not necessarily represent the official policy, position, or opinion of The Corporation of the City of Brantford, its employees, Mayor, Councillors, or other representatives with respect to the subject matter of this Report.*

- MMT clinics operate within a “free market”, and are not regulated.
- However, the prescribing and dispensing of Methadone is highly regulated by Health Canada in partnership with the Ministry of Health and Long Term

Care, the College of Physicians and Surgeons of Ontario (CPSO) and the Ontario College of Pharmacists (OCP).

- Like all business sectors, methadone clinics have been experiencing a rapid market expansion phase and will likely now be entering into a rationalization phase.
- Recent changes from the Ministry of Health regarding salaries and billing will impact Doctor's bottom lines downwards significantly. This may impact the viability of some clinics and hasten rationalization.
- The number of Methadone Maintenance Treatment (MMT) clinics that have opened in Brantford over the past two years is a chain reaction to conflicts between physicians and patient overcrowding at one particular clinic. The recent opening of the ACT Clinic is a prime example of this. The number of clinics (5) bears no relationship to market need.
- Brantford does not need 5 clinics, and rumours of a 6th clinic (Brantford West Medical Centre 164 Colborne St W) will simply exacerbate an already oversaturated clinic services market. The East Brant Clinic/Grand River Pharmacy at 423 Colborne Street could easily service double the number of patients currently served. The pharmacy dispenses about 2000 prescriptions per week. All the MMT clinics in Brantford are operating under capacity. For a city of Brantford's size, three clinics would normally suffice.
- Methadone is the same everywhere. The only difference between one clinic and another is the approach to patient service.
- The clinic business has undergone great change and will continue to see significant change.

In Brantford, no individual, group or association has formally complained about the any of the five methadone clinics to date. While some downtown business owners have expressed concerns about behavioural problems and crime incidents associated with patients at the MMT clinics, neither Municipal By-Law Enforcement staff nor the Brantford Police Services can provide any evidence of a direct correlation between increased crime/behavioural issues and methadone clinic locations. In 2015 Brantford Police Services responded to less than a dozen calls for service at the 5 clinics, with most of the incidents being minor and involving patient on patient conflicts.

In Appendix B, Chart 1 provides an overview of the various actions municipalities have undertaken to manage MMT clinics. As seen on the chart, the Ontario Human Rights Commission (OHRC) is discouraging municipalities to manage MMT clinics and dispensing pharmacies through regulations under the *Planning Act.*

9.0 FINANCIAL IMPLICATIONS

There are no financial implications with these recommendations.

10.0 CONCLUSION

Since the last staff report on MMT clinics in 2014 the number of MMT clinics in the City of Brantford has increased from 2 to 5. Many municipalities have attempted to regulate MMT clinics and dispensaries as seen in Appendix B. Many of these actions have garnered the attention of the Ontario Human Rights Commission (OHRC), which has consistently warned municipalities against discriminating against people with addictions through land use planning instruments.

The 2014 *Provincial Policy Statement* (PPS) under the *Planning Act* states that the Provincial Policy Statement (PPS) shall be implemented in a way that is consistent with the *Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms*.

In light of these findings, is recommended that the City of Brantford not undertake any attempts to regulate MMT clinics or dispensing pharmacies under the provisions of the *Planning Act* at this time.

_____
Mark Gladysz, MCIP, RPP
Senior Planner - Projects
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Nicole Wilmot, MCIP, RPP
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Gregory Dworak, MCIP, RPP
General Manager
Community Services

Appendix "A" Map 1 – Location of MMT Clinics in Brantford
Appendix "B" Chart 1– A Comparison of Reactions of Municipalities to MMT Clinics and Outcomes
Appendix “C” Staff Report CD2014-039

In adopting this report, is a bylaw or agreement required? If so, it should be referenced in the recommendation section.

Bylaw required	[ ] yes	[x] no
Agreement(s) or other documents to be signed by Mayor and/or City Clerk	[ ] yes	[x] no
Is the necessary by-law or agreement being sent concurrently to Council?	[ ] yes	[x] no

Appendix "A"
Map 1 - Location of MMT Clinics in Brantford

Appendix "B"

Chart 1– A Comparison of Reactions of Municipalities to MMT Clinics and Outcomes

Municipality	Action	Outcome
City of London	In 2010 London undertook an interim control by-law to Study MMT clinics. In March 2012 Council approved amendments to the Official Plan and Zoning By-law (Z-1-122090) to prohibit methadone clinics and dispensaries as-of-right, so that they could only be considered on a site-by-site basis, and subject to evaluative criteria including minimum distance separation and site plan provisions for landscaping and parking. London began licensing MMT clinics in 2013	OHRC has written to London several times cautioning discriminatory planning and licensing was affecting services such as methadone clinics and dispensaries. In August 2012 OHRC sent a letter regarding By-law number Z-1-122090 "encouraging London to take all steps possible to overcome discriminatory neighbourhood opposition and promote services that are inclusive for all *Code* protected groups". OHRC in its review of London's Draft Official Plan (2015) recommended that London: "Remove any zoning or licensing requirements that restrict the locations of clinics and pharmacies in ways that have an adverse and discriminatory impact on *Code* protected groups, such as persons with addiction disabilities".
City of Windsor	In 2011 Windsor's Council directed staff to amend the City's Zoning By-law to redefine the use of medical offices to exclude methadone clinics thereby prohibiting methadone clinics and dispensaries as-of-right in the Zoning By-law, so they could only considered on a site-by-site basis and subject to MDS provisions.	In August 2015 OHRC sent a letter supporting the reversal of amendments to the City's Official Plan and Zoning By-laws to again include methadone clinics under the definition of "Medical Office" as was the case prior to 2011. In September 2015 Council approved this by-law amendment to ensure the City of Windsor is not contravening provincial rules on discrimination. Methadone clinics can open wherever a medical office is permitted.
City of Kitchener	OHRC has cited in its correspondence an example from Kitchener where the Ontario Municipal Board (OMB) in the case of Kitchener (City) Official Plan Amendment No. 58 [2010] O.M.D.B No.666, 64 O.M.B.R. 283 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 the real and substantial efforts were made to accommodate the needs of persons who were adversely affected.	In the Kitchener case, the OMB examined the issue of "people zoning". The OMB found that there was little doubt that the focus of the amendment was not on the uses, but the users. Between 2011 and 2013 3 MMT clinics opened within a several block area along King Street East.
Town of Tillsonburg	In May 2012 Council passed interim control provisions (By-law 3616) that prohibit establishing new methadone clinics and dispensaries for one year while the municipality completed a planning study.	In June 2012 OHRC sent a letter cautioning that the municipality was undertaking discriminatory zoning. In 2014 Ontario Addiction Treatment Centres (OATC) opened a MMT clinic in Tillsonburg.

APPENDIX C

DATE: March 3, 2014 **REPORT NO. CD2014-039**

TO: Chair and Members
Committee of the Whole – Community Services

FROM: Gregory Dworak, General Manager
Community Services

1.0 TYPE OF REPORT

CONSENT ITEM [X]
ITEM FOR COUNCIL CONSIDERATION [ ]

2.0 TOPIC

Methadone Maintenance Treatment (MMT) Clinics and Dispensing Pharmacies

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3.0 RECOMMENDATION

THAT Staff Report CD2014-039 regarding the regulation of Methadone Treatment Clinics and Dispensing Pharmacies BE RECEIVED.

4.0 PURPOSE

On May 13, 2013, at its in camera meeting, Council passed the following resolution:

A. THAT Report No. LO2013-12, being a confidential report on the regulation of a proposed pharmacy and medical offices within the City of Brantford, BE RECEIVED for information purposes, and

B. THAT staff BE DIRECTED to report to Council for the regulation of methadone clinics in the City of Brantford.

This report has been prepared to respond to Council's recommendation "B" above. It provides Council with a review of the options employed by a number of Ontario municipalities to regulate methadone clinics and dispensaries.

5.0 BACKGROUND

5.1 What is Methadone and Methadone Maintenance Treatment (MMT)

Methadone is a synthetic opioid drug that is an effective and legal substitute for treatment of opioid addiction. The term opioid is used to collectively describe a broad range of natural and synthetic substances (i.e. narcotic), including heroin, morphine, codeine, oxycodone (i.e. Percodan/Percocet) and Demerol. According to the College of Physicians & Surgeons of Ontario, opioid substances are exceedingly habit-forming and physically addictive, and their untreated use is correlated with significant social harms and costs in Canada. These include criminal activities committed to buy illegal drugs, overdoses, and transmission of HIV/AIDS and hepatitis A from sharing needles.

According to the 2007 Ontario Ministry of Health and Long-Term Care Task Force, methadone is the most commonly used drug to treat opioid addiction. It is ingested orally, has fewer side effects than many other opiates and has a long 'duration of action' which largely eliminates the euphoria associated with most other opioids (illegal or prescribed). The use of methadone as a treatment is effective in that it reduces or inhibits the symptoms of opioid withdrawal and enables an individual to function and perform mental and physical tasks without impairment.

Methadone is a narcotic and, as such, is regulated by the Federal Government as a controlled substance. To prescribe methadone, a physician must apply for specific exemption under Section 56 of the *Controlled Drugs and Substances Act*. Further, in Ontario, the College of Physicians and Surgeons (CPSO) requires that all physicians that prescribe methadone complete specific training in this regard.

Methadone Maintenance Treatment (MMT) was developed in recognition of the need to provide people who inject opioid drugs with an alternative that reduces the risks of blood borne infection (i.e. hepatitis, HIV) and also reduces the impact of personal and property crime as a means to raise funds needed to sustain illicit opiate use. The CPSO guidelines for MMT notes that methadone treatment reduces risks of death among opiate users, decreases overall drug use and reduces crime.

The CPSO's guidelines for treatment expects that all persons commencing MMT have a urine drug screen to confirm that they are taking opiates and are not already receiving methadone. All persons receiving MMT begin by attending a designated pharmacy/clinic each day to receive their prescribed dosage. Patients may also be required to consult with a physician daily or weekly, thereby enabling observation of the patient.

At such time as a patient is receiving a stable dose of methadone and has consistently tested negative for opiates (via urine drug screen), they may, at the discretion of a physician, be supplied with a number of doses that can be ingested at home (carry's), thereby reducing the need to attend the clinic on a daily basis. In addition, to the foregoing, the CPSO is clear that access to counseling in an integral part of MMT.

Such counseling is typically structured around providing assistance with stress management through non-drug related means and ensuring that basic needs (food, shelter) are managed. In some cases, MMT also provides support for those seeking employment or managing MMT in the workplace for clients who are already employed.

5.2 Methadone Maintenance Treatment (MMT) in Brantford

Brantford has both MMT clinics and methadone dispensing pharmacies. Staff undertook a census of all 27 pharmacies in the City of Brantford in November 2013 to determine how many pharmacies dispensed methadone and how many doses per day were being dispensed. The three dispensing pharmacies are distributed across the City of Brantford, while the two clinics are located in downtown as follows:

- 95 Darling Street (Victoria Park Clinic) – 1100 patients, and;
- 205 Colborne Street (The Brantford Clinic) – 158 patients.

In staff report CD2013-137 dated September 9, 2013, Council approved the Downtown Brantford Business Improvement Area (DBBIA) to coordinate between the two MMT clinics and to monitor any public concerns and complaints. The DBBIA includes both MMT clinics as BIA members and has consulted with them regarding the DBBIA's concerns about new clinics opening in downtown. Staff is now acting on the confidential staff report LO2013-12, which directed staff to provide options to regulate Methadone Treatment as a result of the opening The Brantford Clinic in May 2013.

While some downtown business owners have expressed concerns about behavioural problems and crime incidents associated with clients at these two MMT clinics, neither Municipal Bylaw enforcement staff nor the Brantford Police Services can provide any direct correlation between increased crime/behavioural issues and methadone clinic locations. Therefore, there does not appear to be any behavioural or crime issues associated with any MMT clinic or dispensing pharmacy. There are issues related to parking enforcement at 95 Darling Street and remedial actions have been undertaken as far as reasonably possible within existing enforcement limits.

6.0 CORPORATE POLICY CONTEXT

The report conforms to the Community Strategic Plan as follows:

High Quality of Life and Caring for All Citizens

Long Term Desired Outcome

Brantford will be known as a community with a social conscience - one that supports those in need (including children, youth, seniors, people with disabilities and marginalized populations).

7.0 INPUT FROM OTHER SOURCES

The request to address the issue of methadone maintenance treatment facilities originates with the Downtown Brantford Business Improvement Area (DBBIA). Legal Services were consulted in the preparation of this Report and Brantford Police Services contributed through their involvement with the Downtown Advisory Committee.

8.0 ANALYSIS

8.1 Other Municipal Experiences

Staff has reviewed the regulatory response of a number of municipalities to the opening and locating of methadone clinics over the past few years as precedents. In particular staff reviewed the actions of the City of London, City of Windsor, Town of Woodstock, City of Hamilton and the City of Kitchener. The municipal response to regulating methadone clinics has varied between municipalities and this diversity of opinion has been included in this report for comparative purposes.

8.2 City of London: Overview

The City of London regulates MMT facilities through their Official Plan and Zoning Bylaw.

Initially, the City of London Council passed an Interim Control Bylaw (ICB) regarding methadone clinics in November 2010 to provide staff with an opportunity to prepare a study to assess alternatives. The ICB was appealed to the Ontario Municipal Board by a methadone services provider. Upon consideration of the matter, the OMB rendered a decision in June 2011 upholding the City's ICB to permit the City an opportunity to study the impacts of methadone clinics prior to the establishment or expansion of any new facilities.

The OMB decision regarding the ICB determined that the definitions employed by London for both Methadone Clinics and Methadone Dispensaries were reasonable in the context of the ICB and, further, that these facilities were appropriately considered to be land uses with distinct land use planning impact. London's background research, as presented at the hearing regarding the ICB, provided the OMB with evidence establishing the relationship between the operation of methadone clinics and the potential land use impacts of these facilities. These impacts, as described in the above–noted London report, included:

- High patient volumes that create limited space for waiting which can lead to off-site line ups extending into the public realm;
- Gathering and loitering outside the facility;
- Pedestrian congestion along the street;
- Illegal parking on adjacent properties in "no parking" and "no stopping" areas;
- Garbage and littering in the area;
- Public order issues;
- People selling urine or methadone doses outside a clinic;
- Trafficking of narcotics and prostitution activities in the vicinity of a clinic; and,
- Improper disposal of drug paraphernalia in the vicinity of the clinic.

In rendering its decision regarding the ICB, the Board accepted the City of London's position that methadone clinics and dispensaries are [if defined appropriately] "distinct land uses that can have distinct land use impacts".

As a result of their review of alternatives, the City of London determined that regulating methadone clinics was preferably accomplished through amendments to the Zoning Bylaw and Official Plan. City of London Planning staff determined that the following issues needed to be addressed:

- that addiction to opioid based prescription pain killers was growing in the community;
- that it is important that the community make Methadone Maintenance Treatment as accessible as possible for those wishing to take action to address their addiction; and,

- that it is important to recognize methadone clinics and methadone pharmacies have the potential to generate land use impacts.

London retained Scott Burns Planning Consultants (SBPC) to prepare a discussion paper that would provide basic information about opiate addiction, MMT programs, issues raised about clinics currently operating in , and a summary of actions taken by other Canadian communities. SBPC was also asked to provide land use planning analysis and to suggest possible future actions that the City could consider.

City of London Planning staff used the information obtained by the SBPC discussion paper, as well as their own stakeholder consultation, to inform the development of Official Plan and Zoning Bylaw provisions to regulate the location of MMT facilities. The SBPC discussion paper identified a number of issues regarding methadone clinics as follows:

- Methadone clinics are both a health care and land use planning issue;

- There are various types of methadone treatment dispensing facilities which need to be addressed according to their impacts;

- 'Primary purpose' clinics have the potential to create land use impacts associated with gatherings of clinic participants in public spaces (i.e. sidewalks, road allowances, loitering in or near nearby businesses, illegal activities such as drug trading).

The City of London proceeded to develop a land use planning framework for regulating the location of MMT facilities based on the broader goals determined through the above-noted studies and consultations. The said framework resulted in Official Plan and Zoning Bylaw amendments being adopted in March 2012 that included the following policies/regulations:

- **Amending the Zoning Bylaw** to effectively prohibit methadone clinics and dispensaries as-of-right in the Zoning Bylaw, so that they may only be considered on a site-by-site basis by way of a zoning bylaw amendment;

- **Adopting Official Plan policy** acknowledging methadone maintenance treatment as an important facet of health care delivery within the City, the need to plan for the use in locations that best meet the needs of those who use the clinics, and the need to minimize potential land use conflicts that can be generated by the clinics and pharmacies;

- **Adopting Official Plan policy** that only considered permitting methadone clinics and pharmacies in certain Official Plan designations throughout the City, following a zoning bylaw amendment application, once it was

demonstrated that the clinic or pharmacy met the following evaluative criteria:

a) Sites well served by public transit;

b) Property boundaries for proposed methadone clinics and methadone pharmacies must be a minimum of 300 m from any elementary or secondary school property;

c) Property boundaries for proposed methadone clinics and methadone pharmacies must be a minimum of 300 m from any municipal library, municipal pool, municipal arena, of the Western Fairgrounds;

d) Sites must be large enough to accommodate parking requirements; and;

e) Providing a Planning Impact Analysis.

- **Adopting Official Plan policy and Amending the Zoning Bylaw** to include regulations that:

a) Require MMT facilities and pharmacies be located no closer than 300.0 metres from an elementary school, secondary school, municipal library, municipal arena, municipal pool, the Western Fairgrounds or Boys and Girls clubs

b) Require parking of 1 space per 15 square metres, and;

c) Require bicycle Parking of no less than 5 spaces

8.3 City of Windsor: Overview

In Windsor, the issue of methadone clinic regulation arose when Council directed staff to amend the City's Zoning Bylaw to redefine the use of medical offices to exclude methadone clinics. There were four methadone treatment facilities operating in the City of Windsor as of June 2011.

The City of Windsor approved amendments to the Official Plan and Zoning Bylaw that resulted in the following policies and regulations:

- **Amending the Zoning Bylaw** to effectively prohibit methadone clinics and dispensaries as-of-right in the Zoning Bylaw, so that they may only be considered on a site-by-site basis by way of a zoning bylaw amendment;

- **Adopting Official Plan policy** that only considered permitting methadone clinics and pharmacies in certain Official Plan designations throughout the City, following a zoning bylaw amendment application, once it was

demonstrated that the clinic or pharmacy met the following evaluative criteria:

a) Sites well served by public transit;

b) Property boundaries for proposed methadone clinics and methadone pharmacies must be a minimum of 150 m from lands zoned for residential, institutional or open space purposes, excluding lands used for hospitals, universities and community colleges, as well as any land used for a Methadone Clinic;

c) The use is supported by a Planning Rationale Report, containing details of the application including proximity to public transit and supporting reason why the application should be approved.

- **Amending the Zoning Bylaw** to include regulations that:

a) Require MMT facilities and pharmacies be located no closer than 150.0 metres from the nearest lot line of any other lot Methadone Clinic, or lands used or zoned for residential, institutional and/or open space purposes, or any lot on which a school is located (not including a university or community college)

b) Require parking of 1 space per 13.5 square metres, and;

c) Permitting Methadone Clinics in Hospitals.

The above-noted amendments to the City of Windsor Official Plan and Zoning Bylaw were initially appealed to the Ontario Municipal Board; however, these appeals were subsequently withdrawn prior to a hearing being held by the OMB, and the Zoning Bylaw and Official Plan amendments are now considered in full force and effect.

8.4. City of Woodstock: Overview

In Woodstock, the issue of methadone clinics and dispensaries was a subject of discussion for several years. Woodstock had one methadone clinic at the time of these discussions. Concerns regarding public safety, business interests, community health issues and public policy have all been raised and discussed.

In April 2011, the City of Woodstock Council passed an Interim Control Bylaw (ICB), and further extended the ICB to April 2013. This was meant to govern the location of new and expanding methadone clinics while City staff conducted a study concerning the regulation of methadone clinics.

The City of Woodstock approved amendments to the Official Plan and Zoning Bylaw that resulted in the following policies and regulations, which are very similar to the approach taken in the City of London:

- **Amending the Zoning Bylaw** to effectively prohibit methadone clinics and dispensaries as-of-right in the Zoning Bylaw, so that they may only be considered on a site-by-site basis by way of a zoning bylaw amendment;

- **Adopting Official Plan policy** acknowledging methadone maintenance treatment as an important facet of health care delivery within the City, the need to plan for the use in locations that best meet the needs of those who use the clinics, and the need to minimize potential land use conflicts that can be generated by the clinics and pharmacies;

- **Adopting Official Plan policy** that only considered permitting methadone clinics and pharmacies in certain Official Plan designations throughout the City, following a zoning bylaw amendment application, once it was demonstrated that the clinic or pharmacy met the following evaluative criteria:

  a) Generally located on an arterial or collector road, or within a reasonable walking distance;

  b) The property boundaries for the methadone dispensary or clinic shall be at least 100 metres from any elementary or secondary school property, public library or another methadone clinic;

  c) Sufficiently large to accommodate adequate parking to meet the needs of the facility;

  d) The submission of a Planning Justification Report demonstrating how the proposed use would be integrated into the surrounding area.

- **Adopting Official Plan policy and Amending the Zoning Bylaw** to include regulations:

  a) Requiring parking of 1 space per 15 square metres, and;

  b) Requiring waiting rooms for methadone clinics occupying at least 15% of the gross floor area of the clinic.

8.5 City of Hamilton: Overview

Hamilton has chosen not to use licensing or land use planning tools to regulate MMT providers. In a report prepared by City of Hamilton Planning staff, this approach was chosen for the following reasons:

Licensing: Any municipality 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 services 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 Bylaws 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". According to the City of Hamilton, their opinion in this regard was based on the conclusion of the Ontario Municipal Board when it quashed an interim Control Bylaw passed by the City of Oshawa that prohibited 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.

8.6 City of Kitchener: Overview

In Kitchener, the opening of a methadone clinic was identified as a serious concern for a surrounding neighborhood in 2010. The City since then has not pursued regulation through zoning or licensing of MMT facilities. Instead, a team made up of the City's municipal bylaw staff, police, and representatives of other agencies have worked with the methadone clinics and 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 operators there have been no issues brought forward by the community. Kitchener has pursued a policy of openness in regards to MMT providers since it began reviewing this issue in 2011. Bylaw enforcement has taken a progressive approach based on MMT providers coming to the city first with their plans.

Recent concerns about a third clinic close to another clinic on King Street E. caused Council to ask staff to look at minimum distance separation as a possible option. Kitchener has all three MMT clinics servicing Kitchener/Waterloo/ Cambridge. A report from Kitchener's Planning Department is forthcoming.

8.7 Considerations for Brantford

Land Use Planning Regulations:

Ontario municipalities have responded to MMT facilities in a variety of ways, from employing Minimum Distance Separation standards (as in London), to prohibiting the location of MMT facilities in certain zones, requiring the use be separated from a variety of other uses and applying development standards, to not constraining MMT facilities through either licensing or zoning (as in Hamilton and Kitchener).

It is evident from staff's review that methadone clinics may be regulated through *Planning Act* instruments such as an Official Plan and Zoning Bylaw, and Interim Control Bylaws may be passed to provide municipalities with an opportunity to study their alternatives, as other municipalities have taken a similar approach. Further, the City of London's experience before the Ontario Municipal Board following the passing of their Interim Control Bylaw demonstrates that methadone clinics and dispensaries are [if defined appropriately] "distinct land uses that can have distinct land use impacts".

A fundamental consideration of municipalities in determining whether to use the authority of the *Planning Act* to regulate MMT facilities using zoning regulations and Official Plan policy has been ensuring their approach falls within the scope of authority granted by the *Planning Act*. In particular, should a municipality choose to control MMT facilities using zoning regulations and Official Plan policy, as prescribed by the *Planning Act*, then such regulation and policy must address specific, identifiable land use planning issues.

Limitations of Regulating Using Planning Act Instruments:

Upon consideration of the use of the *Planning Act* to regulate MMT facilities, the City of Hamilton observed that zoning cannot be used to regulate the type of medication prescribed by a pharmacy, nor the particular segment of the population with a specific medical concern that can be treated within a medical clinic. In reaching this conclusion, the City considered the experience of the City of Oshawa, which had an Interim Control Bylaw 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 while they studied the matter, which was quashed at the Ontario Municipal Board.

More recently, after years of review, including a favourable Ontario Municipal Board decision concluding that methadone clinics may have land use planning impacts that fall within the scope of the *Planning Act*, the City of London's efforts to regulate MMT facilities through zoning regulations and Official Plan policy have come under the scrutiny of the Ontario Human Rights Commission. The Ontario Human Rights Commission has expressed concern that London's

approach to the regulation of MMT facilities may discriminate against people with addictions who rely on methadone services. The Ontario Human Rights Commission is currently investigating the City of London and has asked the City to disclose a significant amount of material and documentation to assist in their determination of whether London's rationale for regulating MMT facilities was contrary to the Human Rights Code.

In consideration of the foregoing, including Ontario Municipal Board decisions falling on both sides of the issue, and the strong warnings of the Human Rights Commission, there is not enough certainty at this point to indicate that using land use planning tools to regulate Methadone Clinics can be considered a "best practice" that the City of Brantford should follow.

8.8 Next Steps

Staff will continue to monitor the approaches being undertaken by other municipalities to assess the effectiveness of their various approaches to the regulation of MMT facilities. The results of the on-going processes in London and Kitchener are of particular interest, as both municipalities are currently the subject of further scrutiny following their original course of action. Further, the Kitchener example is also worth monitoring as both their initial collaborative community-based (as opposed to regulatory) approach and their location as a draw for MMT facilities that access a larger regional market is similar to the circumstances presented in Brantford.

Staff will report back to Committee with updates on the progress of these other municipal experiences as they advance.

9.0 FINANCIAL IMPLICATIONS

There are no financial implications with these recommendations.

10.0 CONCLUSION

Currently, the City of Brantford is not experiencing significant problems with the existing MMT facilities in the downtown. However, should Brantford City Council consider regulating future MMT facilities, it is evident that using *Planning Act* instruments such as Official Plan policy and zoning to regulate MMT facilities has been considered and implemented by other municipalities. Further, the Ontario Municipal Board has acknowledged that there are characteristics of an MMT facility that have land use planning implications, which may reasonably be regulated using the *Planning Act*. However, there have also been contrary circumstances where municipalities, such as Hamilton, have determined that regulating MMT facilities through zoning would fall outside of the authority of the *Planning Act*, and the Ontario Municipal Board has quashed *Planning Act* instruments that attempted to regulate MMT facilities.

Should a municipality resolve to regulate MMT facilities using *Planning Act* instruments, consideration must be given to ensuring the scope of the regulations directly address clear land use planning issues, and avoid "people zoning", which falls outside of the authority of the *Planning Act* and may be contrary to the Human Rights Code.

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In adopting this report, is a bylaw or agreement required? If so, it should be referenced in the recommendation section.

Bylaw required	[ ] yes	[x] no
Agreement(s) or other documents to be signed by Mayor and/or City Clerk	[ ] yes	[x] no
Is the necessary bylaw or agreement being sent concurrently to Council?	[ ] yes	[x] no