

## [Municipalities Can't Treat Methadone Facilities Differently From Clinics; Land Use and Planning](#)

The Legal Intelligencer (Online)

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### **Body**

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In 1999, the Pennsylvania General Assembly amended the Municipalities Planning Code (MPC), [53 P.S. §10101 et seq.](#), to establish statewide zoning regulations for methadone treatment facilities. Section 621 of the MPC, [53 P.S. § 10621](#), essentially prohibited a methadone treatment facility from being located within 500 feet of an existing school, public playground, public park, residential housing area, child care facility, church, meetinghouse, or other place of worship established prior to the proposed methadone treatment facility. Section 621 also authorized a municipality to permit, in its discretion, the establishment and operation of a methadone treatment facility within this established 500-foot spatial restriction so long as the municipality conducted a public hearing on the proposed request and provided prior written notice of the hearing to adjacent property owners.

In 2007, the U.S. Third Circuit Court of Appeals ruled in [New Directions Treatment Services v. City of Reading](#), [490 F.3d 293 \(3rd Cir. 2007\)](#), that the MPC's methadone treatment facility restrictions violated Title II of the Americans with Disabilities Act, [42 U.S.C. §12131 et seq.](#), and the federal Rehabilitation Act, [29 U.S.C. §701 et seq.](#) In *New Directions*, the operator of a methadone clinic sought to open a new treatment center in an area of the city interspersed with private residences. Only three lots within the city complied with the MPC's methadone treatment facility location-based restrictions; the property leased by the operator did not. After holding a series of public hearings, the city council denied the operator's application based on Section 621 of the MPC. The operator and individual methadone patients filed suit in the U.S. District Court for the Eastern District of Pennsylvania, raising both constitutional and federal statutory claims.

The district court dismissed the operator's claims. On appeal, the Third Circuit found that in order for the operator's discrimination claim to succeed, it only needed to show that "intentional discrimination was the but-for cause of the allegedly discriminatory action." Concluding that the operator met its burden, the Third Circuit struck down the MPC's location-based restrictions, holding "that a law that singles out methadone clinics for different zoning procedures is facially discriminatory under the ADA and the Rehabilitation Act."

As a result of the Third Circuit's decision in *New Directions*, a Pennsylvania municipality is prohibited from treating a methadone treatment facility any differently than an "ordinary" medical clinic for zoning

purposes. However, the New Directions decision does not prohibit a municipal zoning ordinance from applying "facially neutral" regulations to all medical clinics.

In fact, the Third Circuit in New Directions favorably cited the Ninth Circuit's decision in [\*Bay Area Addiction Research and Treatment v. City of Antioch\*, 179 F.3d 725 \(9th Cir. 1999\)](#), which noted that a discriminatory regulation similar to the MPC's location-based restriction "could only have been rendered facially neutral by expanding the class of entities that may not operate within 500 feet of a residential neighborhood to include all clinics at which medical services are provided, or by striking the reference to methadone clinics entirely."

Since New Directions, Pennsylvania appellate courts have addressed zoning regulations related to methadone clinics on three occasions.

First, in 2009, the Commonwealth Court relied upon [\*New Directions in Freedom Healthcare Services v. Zoning Hearing Board of the City of New Castle\*, 983 A.2d 1286 \(Pa. Commw. 2009\)](#), to reverse a trial court order affirming a zoning hearing board's denial of a special exception application to operate a clinic that dispensed methadone. Although medical clinics were a use by right, a special exception was necessary to locate parking spaces off-site. The board denied the special exception on the basis that the total number of parking spaces being provided was inadequate.

The applicant in Freedom proposed a medical clinic that, among other things, would dispense methadone to patients addicted to heroin. The proposed clinic would be open seven days a week and was projected to treat 200 to 250 patients per day during the hours of 6 and 10 a.m. Although the zoning ordinance in question treated methadone clinics the same as medical clinics, as required by New Directions, the ordinance's parking table was silent as to the number of spaces required for medical clinics. In order to determine the number of parking spaces a medical clinic was required to provide, the Commonwealth Court held that the city must look to the parking requirements of the use most similar to medical clinics.

After examining the zoning ordinance's parking table, the court concluded that the use most similar to medical clinics was medical offices. The zoning ordinance required medical offices to provide seven parking spaces for each physician on site. The court acknowledged that the proposed methadone clinic did not follow the parking patterns of a medical office as contemplated by the zoning ordinance since one physician at a methadone clinic would generate a significantly greater amount of traffic than that which would be generated by one physician at a medical clinic. However, the court concluded that because the proposed methadone clinic was permitted by right without regard to number of patients served, concerns over health and safety of the community, including unsuitability of volume of cars and patients, as well as traffic and parking issues, while valid, were a legally insufficient basis to deny the special exception for off-site parking.

Two years later, relying upon both the New Directions and the Freedom decisions, in an unpublished opinion, the [\*Commonwealth Court in Habit OPCO v. Borough of Dunmore\*, 2011 Pa. Commw. Unpub. LEXIS 319, 1 \(Pa. Commw. Ct. 2011\)](#), struck down provisions of a local zoning ordinance that imposed restrictions on methadone clinics, concluding that the provisions violated the ADA. The invalidated provisions required, among other things, that in addition to meeting the borough's basic conditional use approval criteria, methadone clinics were required to obtain licensing from the Pennsylvania Department of Health before opening and were prohibited from locating within one half-mile of churches, charitable

institutions, schools, public playgrounds, child day-care centers, liquor stores, hotels, restaurants, clubs possessing a retail liquor license, older adult daily living centers and senior centers.

Most recently, the Commonwealth Court rendered a decision in [\*THW Group LLC v. Zoning Board of Adjustment\*, 86 A.3d 330 \(Pa. Commw. Ct. 2014\)](#), following the Third Circuit's holding in *New Directions*. In so ruling, the court acknowledged that, although the courts might sympathize with the concerns of the surrounding community, municipalities are not free to apply different zoning standards to methadone clinics than to ordinary medical clinics. In THW, the applicant sought a zoning use permit to establish a medical office that would dispense methadone for the treatment of patients in the city's C-2 Commercial District. The proposed clinic would operate from 6 a.m. to 3 p.m. daily and would serve approximately 200 patients per day. The city department of licenses and inspections issued the permit. Shortly thereafter, neighbors appealed the issuance to the city zoning board of adjustment on the basis that a methadone clinic is not a permitted use in the C-2 District. After conducting a public hearing, the board agreed with the appellants and determined that the department erred in granting the permit, explaining that methadone clinics are not permitted uses in the C-2 District because they are not specifically listed as such under the city zoning code.

On appeal, the trial court reversed, finding that there is no difference between a medical clinic and a medical office or medical center, as both provide treatment to patients, and because the city zoning code specifically permits the use of property in the C-2 District for the "treatment of patients" and permits medical centers and medical offices, a methadone clinic also is a permitted use. The Commonwealth Court affirmed the trial court's decision, noting that heroin addicts must be classified as people with a disability under the ADA and the federal Rehabilitation Act, and that treating methadone clinics differently than other medical clinics therefore violates the ADA.

The Commonwealth Court further explained that, because THW's proposed use "clearly qualifies as a use of the property for the 'treatment of patients' and a medical office," both of which are specifically permitted in the C-2 District, no error is apparent in the legal determination that THW's proposed methadone clinic is permitted in the C-2 District.

In light of *New Directions* and its progeny, a municipality must be cognizant of the prohibition against distinguishing between medical clinics that dispense methadone, or any other type of narcotic drug available for the treatment of opiate dependence for that matter, and medical clinics that do not dispense such drugs and/or provide such treatment. If a municipality desires to apply more stringent regulations to methadone clinics in order to eliminate and/or lessen associated detrimental impacts to the health and safety of the community, such regulations must be facially neutral and apply to all medical clinics in the same zoning district.

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