

## Phila. Bill Part of Medical Offices and Zoning Trend

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On Dec. 5, 2013, Philadelphia City Council passed Bill No. 130770 prohibiting medical, dental and health practitioners in the Sixth and Tenth councilmanic districts of Northeast Philadelphia. The ordinance appears to be part of a larger trend prohibiting medical uses with potential to affect such uses throughout Philadelphia, as it was passed around the same time City Council introduced Bill No. 130920 to similarly restrict such uses in the First Councilmanic District.

While not entirely clear, the recent changes appear to be intended to control the operation and location of methadone clinics in the city. Nonetheless, by prohibiting the uses, Bill No. 130770 would require that every new medical, dental or health practice proposed for the district obtain a variance from the Zoning Board of Adjustment and meet with local neighborhood groups prior to obtaining a permit for the use. To obtain an ordinance, the applicant would have to show that a denial of the application would result in an undue hardship.

The bill was approved despite a veto from Mayor Michael Nutter, after City Council overrode the veto. In vetoing the bill, Nutter cited the bill's impact on access to health care and stated that such a broad zoning rule by district, rather than by neighborhood, undermines one of the goals of the Zoning Code. Nutter's veto came after the City Planning Commission similarly recommended that the bill not be approved for similar reasons. The City Planning Commission cited the undue burden on residents seeking medical care and the exclusionary nature of the bill, in general.

Bill No. 130920 would impose the same prohibition on the First Councilmanic District, covering much of Center City east of Broad Street, South Philadelphia, Old City and other neighborhoods along the Delaware River. The bill is currently being held in committee with the City Council Committee on Rules. Together with the bill affecting Northeast Philadelphia, the recent legislative changes could result in prohibitions on medical offices covering a large part of the city, especially if other councilmembers follow suit and introduce similar ordinances in their own districts.

Bill No. 130770, affecting Northeast Philadelphia, was proposed on the heels of a contentious zoning battle against the development of a methadone clinic in the Holmesburg section of the city by THW Group LLC. The battle spilled into the court system as the Commonwealth Court recently released an opinion in *THW Group LLC v. Zoning Board of Adjustment*, 2014 No. 1251 C.D. 2013 (Pa. Cmwlth. 2014).

The case concerned the Zoning Board of Adjustment's denial of a zoning use permit allowing the operation of a methadone clinic. The applicant, THW Group, initially received a zoning use permit from the Department of Licenses and Inspections for a medical office in order to operate a methadone clinic on its property in Holmesburg. Neighbors challenged the granting of the permit to the Zoning Board of Adjustment, and after a public hearing the board issued a decision that the use permit was issued in error on the grounds that a

methadone clinic is not a medical office for purposes of the Zoning Code, so the use is not a permitted use. THW Group appealed the denial to the Philadelphia Court of Common Pleas, which then reversed the decision of the board by issuing an opinion that a methadone clinic is in fact a medical office for the treatment of patients and, as such, is a permitted use for that property.

The Court of Common Pleas' decision was appealed by local neighbors to the Commonwealth Court. The Commonwealth Court affirmed the Court of Common Pleas decision that a methadone clinic falls under the scope of property in use for the "treatment of patients" or falls under the definition of a medical clinic. Further, the Commonwealth Court affirmed that treating a methadone clinic differently from an ordinary medical clinic violates the Americans with Disabilities Act, as held in *New Directions Treatment Services v. City of Reading*, 490 F. 3d 293 (3d Cir. 2007). In *New Directions*, the U.S. Court of Appeals for the Third Circuit held that a Pennsylvania statute prohibiting methadone clinics within 500 feet of schools, public playgrounds, public parks, residential housing areas, child-care facilities, churches, meetinghouses, or other places of religious worship violated the Americans with Disabilities Act and the Rehabilitation Act.

Accordingly, any outright city ban on methadone clinics would likely also be invalid on those same grounds. By contrast, city ordinances prohibiting medical offices outright do not appear to cause the same discriminatory legal issues, as they treat methadone clinics the same way they treat all other medical offices.

Regardless of the intentions of the recently passed ordinance and the ordinance currently under consideration, the effects are quite significant and far-reaching. Though existing uses would be grandfathered, such ordinances could dramatically impact prospective medical providers in those neighborhoods, potentially reducing health care accessibility in the city or creating an added cost and time commitment for health practitioners trying to do business in the city. This could include urgent care clinics that have recently increased in popularity across the country.

Further, even seemingly unaffected uses should be mindful of the legislation as the broad scope of the language could be interpreted to include chiropractors, massage therapists, and other health uses that may fall beyond the initial intention of the bill. Those representing clients in the health care industry should be mindful of the evolving legal environment and potential zoning challenges that may arise if such trends should continue.

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