

DATE: June 5, 1990

TO: Councilmember Linda Bernhardt
FROM: City Attorney
SUBJECT: Methadone Treatment Facility - Public Notice
Establishment

By memorandum dated March 22, 1990, copy attached for reference, you described a situation where a Methadone Treatment Center was established in a shopping center in the Serra Mesa Community. Your memorandum indicated that there was considerable community concern about the presence of the treatment center and you asked for our comments as to "whether a city ordinance requiring facilities such as the methadone treatment center to notify elementary and secondary schools within a certain radius, as well as the area's community planning group upon the application for an operating license would be legally supportable."

With regard to the potential for the establishment of an ordinance to control the establishment of methadone treatment facilities, it appears from our review that there is no legal reason that methadone treatment facilities could not be required to obtain a conditional use permit as a condition to commencing operations. For example, Municipal Code section 101.0510C.3.o. provides that the Planning Commission may grant a conditional use permit for "treatment and counseling offices for sex offenders in the R-1000 through R-200 zones, commercial zones, and the M-1B Zone." In order to grant such a conditional use permit, the Planning Commission must conduct a noticed public hearing. Notice is published in the Daily Transcript and mailed notice is provided to owners of property within 300 feet of the proposed facility as well as to the affected community planning group "and any other group or organization which has requested notification by written request to the Planning Department." (Section 101.0220 of the Municipal Code.)

At the time of the hearing, the Planning Commission, in order to grant the conditional use permit, must make the following two findings:

- a. The proposed use will not adversely affect the neighborhood, the General Plan, or the Community Plan, and, if conducted in conformity with the conditions provided by the permit, will not be detrimental to the health, safety and general welfare of persons residing or working in the area; and

b. The proposed use will comply with all the relevant regulations in this Code.

As a related matter, a review of the applicable law indicates that methadone treatment facilities are licensed by the State Department of Health Services pursuant to Section 11875 et seq. of the State Health and Safety Code (see attached). With regard to existing methadone treatment facilities you will note that Section 11877.7 specifies the grounds for suspension or revocation of existing licenses and includes in subsection (e) as one of the reasons for suspension or revocation, "conduct in the operation of a methadone program which is inimical to the health, welfare, or safety of . . . an individual in . . . the program or the people of the State of California."

Therefore, it appears that, for existing methadone treatment facilities, if such a facility conducted its operations in such a manner as to be contrary to the health, welfare or safety of citizens in the vicinity of the treatment facilities, such a fact could be grounds for a request for suspension or revocation of a license to dispense methadone.

If it is your desire to proceed with a potential modification to the Municipal Code to require a conditional use permit for methadone treatment facilities, such proposal together with any draft language should be reviewed and commented upon by the Planning Department.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug
Deputy City Attorney

HOV:pev:632(x043.2)

cc Shari Carr

ML-90-66