



FORMAT FOR AGENDA COVER MEMO

Memorandum Date: October 11th, 2023

Order Date: October 24th, 2023

TO: Board of County Commissioners

DEPARTMENT: Office of Legal Counsel

PRESENTED BY: Marcus I. Vejar

AGENDA ITEM TITLE: In the Matter of Waiving of ORS 430.590 (1-3) for Oregon Recovery and Treatment Centers, LLC at the Location of 98 E 11th Avenue to be used as a Methadone Clinic in accordance with ORS 430.590(4)

I. MOTION

Move to grant the Waiver of the Restrictions of ORS 430.590(1)-(3) for Oregon Recovery and Treatment Centers, LLC to open a location at 98 E 11th Avenue, Eugene, Oregon to be used as a Methadone Clinic in Accordance with ORS 430.590(4).

II. AGENDA ITEM SUMMARY

The Board is being asked to approve a waiver of the restrictions of ORS 430.590(1) – (3) that would currently prohibit a methadone clinic from being built at the proposed location due to its proximity to a childcare facility. The Office of Legal Counsel was requested to assist Oregon Recovery and Treatment Centers, LLC in providing materials to the Board to allow for it to approve the wavier, should it decide to do so. The Office of Legal Counsel has not performed any outreach regarding the subject matter, but rather is assisting in the process itself.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Board has only exercised this waiver power at one point in the past. On December 3rd, 2019, the Board had approved a waiver of this same restriction for the Medication Assisted Treatment (MAT) Clinic located at 432 West 11th Avenue, Eugene, OR 97401. In 2019, the Oregon Legislature had amended ORS 430.590 granting counties the authority to waive the 1000' restriction on the location of the methadone clinics and licensed childcare facilities. There are no major procedural barriers to overcome, but rather, this is a decision the Board can make through an

Order as was done in the past. Without clear considerations built into statute, the only consideration to be made is whether the Board believes this waiver is removing unreasonable barriers to patients' access to medically necessary treatment at methadone clinics.

B. Policy Issues

This waiver is a rarely utilized process without any formal administrative policy or objective impacting this decision.

C. Board Goals

This can be related to Objective A and potentially Objective E of the Counties Strategic Priority #1. As the Office of Legal Counsel is assisting in the process of submitting this waiver to the Board but is not going to be the beneficiary of the waiver, questions should be asked as to any concerns the Board has regarding its goals and whether this waiver promotes them.

D. Financial and/or Resource Considerations

This action should not have any Financial or Resource Considerations for the Board. The Oregon Recovery and Treatment Centers will be the recipient of the waiver and will be operating the clinic. This waiver is only to allow for them to proceed given the restrictions related to proximity to childcare facilities.

E. Health Implications

This waiver should not have any health implications. This waiver should only allow the restriction related to the proximity to childcare facilities to be waived. Any other licensing or statutory compliance will be handled by Oregon Recovery and Treatment Centers, LLC separately from this process.

F. Analysis

This waiver is a necessary step for Oregon Recovery and Treatment Centers, LLC to have passed to be able to move forward with their clinic at the proposed location. However, this waiver is a limited issue and is not being promoted by any particular department. Rather, as a rarely utilized process, the Office of Legal Counsel is assisting the requestors to bring forward this issue to the Board and provide an order for the Board to accomplish this waiver should it decide to waive the requirement. The proposed attached order would allow for the Board to waive the requirement for Oregon Recovery and Treatment Centers, LLC and the decision-making criteria is whether the Board believes this may remove unreasonable barriers to patients' access to medically necessary treatment at methadone clinics.

G. Alternatives/Options

The primary alternative to granting this waiver would be to request the proposed clinic be placed elsewhere. It is not understood by the Office of Legal Counsel at this time as to how feasible it would be to acquire an alternative location. However, the Board should not be required to approve of this waiver should it decide to maintain the statutory restrictions.

IV. RECOMMENDATION

The Board should carefully consider whether appropriate outreach has been done and whether it believes a methadone clinic at this location is beneficial. Assuming the Board wants to move forward with the methadone clinic being built at this location, it should grant the attached order waiving the restriction contained in ORS 430.590(1)-(3).

V. TIMING/IMPLEMENTATION

According to conversations with Oregon Recovery and Treatment Centers, LLC, construction should be completed in November. Granting of this waiver would allow for the clinic to move forward with the processes it needs to pursue to allow it to open. However, granting of this order would allow for this restriction to be waived as of the date of signing.

VI. FOLLOW-UP

No follow-up should be necessary on the granting of this waiver.

VII. ATTACHMENTS

Proposed Board Order Granting Waiver of ORS 430.590 Restrictions.

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 23-10-24-02

In the Matter of: WAIVING THE
RESTRICTIONS OF ORS 430.590 (1-3) FOR
OREGON RECOVERY AND TREATMENT
CENTERS, LLC AT THE LOCATION OF 98 E
11th AVENUE TO BE USED AS A
METHADONE CLINIC IN ACCORDANCE
WITH ORS 430.590(4)

WHEREAS, the Board of Commissioners has determined that the location of the methadone clinic being constructed at 98 E 11th Avenue, Eugene, OR 97401 is currently within 1,000 feet of a licensed childcare facility; and

WHEREAS, Oregon Revised Statute 430.590(1) prohibits the siting of any methadone clinic within 1,000 feet of a licensed childcare facility unless waived by a county; and

WHEREAS, the 2019 Oregon Legislature amended 430.590 and granted counties the authority to waive the 1,000' restriction on the location of the methadone clinics in relation to licensed childcare facilities; and

WHEREAS, the Lane County Board of Commissioners has determined that a waiver for the 1,000; restriction impacting the siting of the methadone clinic would remove unreasonable barriers to patients accessing medically necessary methadone treatment.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The 1,000 feet siting restriction in ORS 430.590(1) is hereby waived pursuant to ORS 430.590(4) and the building located at 98 E 11th Avenue, Eugene OR 97401 is now authorized and permitted to be used as a methadone clinic.

ADOPTED this 24th day of October, 2023.

Pat Farr, Chair
Lane County Board of Commissioners

Legal Authority Regarding ORS 430.590

Presented by: Marcus I. Vejar, Assistant County Counsel

What is the Restriction:

- 1) It is unlawful for any person to commence operating a methadone clinic:
 - (a) Within 1,000 feet of the real property comprising an existing public or private elementary, secondary or career school attended primarily by minors; **or**
 - (b) Within 1,000 feet of the real property comprising an existing licensed child care facility. As used in this section, “licensed child care facility” means a child care center certified under ORS 329A.280 (When certification required) that is operating under authority of a valid business license.

What is the Exception?

(4) A county or a local public health authority, as defined in [ORS 431.003 \(Definitions\)](#), may waive the siting restrictions under this section to the extent necessary to remove unreasonable barriers to patients' accessing medically necessary treatment at methadone clinics

Lane County is included under this definition. The Local Public Health Authority in this definition also includes County government.

Exception created in September of 2019. Not a lot of case law or interpretation has occurred in this area. Lane County issued its first and only waiver of these exceptions in December of 2019 for HHS.

Considerations

- ▶ Statutory: “...to the extent necessary to remove unreasonable barriers to patients’ accessing medically necessary treatment at methadone clinics.”
 - a) Does not create many required considerations other than how this waiver meets these goals.
 - b) This flexibility allows for it to be a County based conversation on what is best for the community v. trying to meet a particular set of factors to allow for the waiver.
- ▶ Legislative History: This waiver was brought up as an ability to allow for jails to have these clinics given their level of security. Concerns were raised regarding having Methadone clinics being created all around the state, however, no language change came from those concerns. Flexibility for the Counties decision-making was preserved and there was not a need to further restrict that language as evidenced by its passing.

Quote from Jeston Black, Governmental Relations Manager for Multnomah, during Legislative Session:

“It doesn’t make sense to have a rock hard rule around 1,000 feet. We have heard concerns from legislators. I think originally the bill eliminated that 1,000 foot rule entirely. We heard on the Senate side and what we tried to come up with was a local solution. So, this would enshrine the 1,000 foot rule except for the ability to have a local conversation at the county level about siting methadone treatment facilities in different places. It would go through a public process that County Commissioner would have to vote on this. It would be a process but done locally versus trying to create a statewide solution. . .”

“Maybe other counties don’t want to touch this with a 10-foot pole, but it would maybe give some counties the flexibility, in our case, to talk about that.”

Conclusion

- ▶ The proponents of this request have produced public comment to help support this waiver. They have done the outreach and legwork on this and shared that information earlier;
- ▶ This decision is rooted directly in the policy considerations of Lane County and whether it wants to provide this waiver. There are no legal requirements we grant the waiver under specific conditions and the Board Order provided should allow for the waiver to take effect, should the Board decide to grant it;
- ▶ My role here is to provide the legal framework and considerations surrounding this waiver. As the Office of Legal Counsel is not the proponent of this waiver but simply providing the mechanics on granting it, careful consideration should be had of the information already provided.