



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

March 23, 2021

SUBJECT: Adopt Resolution 12-21 Opposing California Department of Public Health (CDPH) attempt to circumvent local control over Syringe Exchange Programs.

PREPARED BY: Damiean Sylvester, Police Chief

Recommendation

Staff recommends Council adopt Resolution 12-21 opposing CDPH attempt to circumvent local control over Syringe Exchange Programs.

Background/Discussion

At the September 8, 2020 City Council meeting, the City Council voted to introduce and waive the first reading of Ordinance No. 477. The City Council then voted to adopt Ordinance No. 477 on September 22, 2020, banning the establishment and operation of a Syringe Exchange Program within the city limits of the City of Wheatland. The ordinance went into effect on October 22, 2020.

On March 11, 2021 Assemblyman James Gallagher alerted the public of a new attempt by CDPH to circumvent local control over syringe giveaway programs. Assemblyman Gallagher is encouraging concerned local governments to make their voices heard in opposition to the purposed regulatory changes by CDPH.

A summary of the reasons for the proposed regulatory action is attached.

Fiscal Impact

None.

Attachments

1. Resolution 12-21
2. CDPH Initial Statement of Reasons for Rule Change

RESOLUTION NO. 12-21

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHEATLAND OPPOSING CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH) ATTEMPT TO CIRCUMVENT THE CITY'S POLICE POWERS REGARDING SYRINGE EXCHANGE PROGRAMS

At a regular meeting of the Council of the City of Wheatland, State of California held on the 23rd day of March 2021.

WHEREAS, it is in the best interest of the citizens of the City of Wheatland to maintain and enforce the ordinance banning a syringe exchange program;

WHEREAS, the City of Wheatland adopted Ordinance 477, adding Wheatland Municipal Code Chapter 8.36 banning the establishment and operation of syringe exchange programs within the city limits of the City of Wheatland effective October 22ND, 2020;

WHEREAS, adoption and enforcement of Ordinance 477 is within the police powers of a California municipality, and

WHEREAS, the California Department of Public Health has proposed amended regulations that are inconsistent with local control and regulation of syringe exchange programs and would thwart the City's existing authority over such matters within city limits.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Wheatland does hereby oppose the California Department of Public Health's proposed amended regulations regarding local control over syringe exchange programs and directs the City Manager, or his designee, to provide a copy of this resolution to the Department.

I HEREBY CERTIFY that the foregoing resolution was duly and regularly introduced and adopted by the Council of the City of Wheatland, County of Yuba, State of California, held on the 23rd day of March, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 23rd day of March 2020.

By:

Lisa Thomason, City Clerk

CITY OF WHEATLAND, CALIFORNIA
BY ITS CITY COUNCIL

Rick West, Mayor

INITIAL STATEMENT OF REASONS

Summary of Proposal

The California Department of Public Health (Department) proposes to make minor amendments to California Code of Regulations (CCR), Title 17, Sections 7000, 7002 and 7014. First, Assembly Bill (AB) 1810 (Ting, Chapter 34, Statutes of 2018) shortened the public comment period for state-authorized syringe exchange program (SEP) applications in Health and Safety Code (HSC) from 90 days to 45 days; the Department proposes to make the corresponding change in regulations. Second, the Department proposes to remove the words “local ordinances” from CCR Title 17, Section 7002(a)(13)(A) and Section 7014 to be in compliance with HSC 121349(c).

Background and Summary of Existing Laws and Regulations

Authority

HSC Section 131200 authorizes the Department to adopt and enforce regulations for the execution of its duties. Per HSC Section 131019, the Office of AIDS is the lead agency within the state responsible for coordinating HIV/AIDS-related programs. HSC Section 121349 gives the Department the authority to authorize SEPs. AB 1810 removed all sunset provisions from the SEP authorization program and extended the operation of these provisions indefinitely.

Background and Existing Laws

The practice of sharing needles and syringes, which is common among people who inject drugs (PWID), poses a substantial risk for the spread of bloodborne diseases, including HIV and viral hepatitis. Paraphernalia possession laws in many states, including California, have in the past made it difficult or illegal for PWID to obtain and possess sterile syringes and difficult or illegal for agencies that serve them to provide them with sterile syringes. Such statutory barriers have consistently been found to be associated with increased sharing of syringes and increased prevalence of HIV. Removing those barriers is a key HIV prevention strategy endorsed by the California Legislature and the federal Centers for Disease Control and Prevention (CDC), which funds the prevention efforts of the Office of AIDS. Supporting syringe exchange programs is one of the strategies of the federal government’s current “Ending the HIV Epidemic” plan.

SEPs have been operating in California since the late 1980s, providing sterile injection equipment, disposing of used syringes and providing linkages to health care and social services. Since the passage of AB 136 (Mazzoni, Chapter 762, Statutes of 1999), organizations in California that provide syringe exchange services have been permitted to apply for authorization to local (city or county) governments. This authorization protects SEP providers from prosecution under HSC Section 11364.7, which lists syringes as drug paraphernalia and thus makes it illegal to provide syringes without a prescription to another individual for disease prevention or any other purposes. AB 604

(Skinner, Chapter 744, Statutes of 2011) amended California code to allow the Department to also authorize SEP providers. According to the bill's author, Assemblymember Skinner introduced the bill after the Fresno SEP lost its authorization due to a change in office holders on the Fresno County Board of Supervisors in 2011. A similar change to the San Diego City Council had previously resulted in the shutdown of an SEP run by a local federally-qualified health center. The bill's author cited concern about lack of syringe exchange services in jurisdictions highly impacted by HIV, hepatitis C virus (HCV), and injection drug use, as well as concern that the Department lacked the authority "to fully respond to urgent public health concerns from HIV, hepatitis, and other blood-borne infections." AB 604 granted new authority to the Department to authorize SEPs, but did not impact the ability of local governments to continue to authorize SEPs if they chose.

HSC 121349 and Business and Professions Code Section 4145 outline the mechanisms by which an SEP may be authorized to operate. Regulations approved in 2014 allow the Department to authorize SEPs in locations where the Department determines that the conditions exist for rapid spread of HIV or viral hepatitis. Organizations that want to add syringe exchange services may apply directly to the Department's Office of AIDS for authorization, rather than to their local county or city government. Applications must meet minimal requirements outlined by the law to be considered. CCR, Title 17, Sections 7000-7016 define the application process, as well as the reauthorization process for state-authorized entities. All state-authorized SEPs are required to submit a yearly progress report. They may apply for reauthorization prior to the end of the two-year authorization period.

Effectiveness of Syringe Exchange Programs

The first SEP was established in California in 1988; there are currently 50 SEPs in the state. SEPs have been rigorously studied since they were first introduced in the mid-1980s in response to injection-related HIV transmission. As CDC has summarized, this evidence has shown that SEPs:

- Reduce HIV and viral hepatitis transmission;
- Reduce overdose mortality;
- Increase entry into substance use disorder treatment;
- Reduce needle-stick injuries;
- Save money; and
- Do not increase drug use or crime.

The impact of SEPs has been most notable in terms of controlling the HIV epidemic: between 2008 and 2014, the annual HIV diagnoses among PWID in the U.S. fell by half. In jurisdictions where SEPs were adopted early and publicly funded, injection-related HIV transmission has been steeply reduced, such as in San Francisco where the

number of infections decreased by two-thirds¹, or New York City where HIV prevalence among PWID fell from 54% in 1990 to 3% in 2012.

SEPs also play an important role in preventing the transmission of HCV, in linking individuals to substance use disorder treatment, and in safe disposal of used syringes. Studies have found, for example, that cities with SEPs have less syringe litter than those that don't have SEPs, and that syringes obtained from SEPs are more likely to be safely disposed than those acquired from other sources.

Unintended Conflict Between Law and Regulation

Some local governments that do not support the establishment of authorized SEPs within their jurisdictions are taking steps to circumvent the intent of HSC 121349 by blocking SEPs from operating through issuing restrictive local ordinances. However, the law is designed such that the state can authorize an SEP specifically because not all jurisdictions, even those who have a high need, support the operation of SEPs within their boundaries.

The law specifically provides preemption language to make clear that a state authorization under HSC 121349 overrides any other laws. The law provides:

“In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, *notwithstanding any other law*, authorize entities that provide services set forth in paragraph (1) of subdivision (d), and that have sufficient staff and capacity to provide the services described in Section 121349.1, as determined by the department, to apply for authorization under this chapter to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes [emphasis added].”

The improper inclusion of reference to local ordinances in CCR Title 17, Section 7002(a)(13)(A) and Section 7014 in the 2014 regulations has created a direct conflict with the law and had the effect of subverting the Legislature's stated intent of the preemption language in HSC Section 121349. This error in the regulations opened an opportunity for local ordinances to improperly shut down an SEP² that was otherwise

¹ San Francisco Department of Public Health, Population Health Division. *Syringe Access and Disposal Services*. (May 2018), <https://www.sfdph.org/dph/hc/HCCommPublHlth/Agendas/2018/May%2015/syringeprez.pdf>.

² County of Orange, Orange County Flood Control District, City of Costa Mesa, City of Orange and City of Anaheim v. California Department of Public Health and Orange County Needle Exchange Program Case No. 37-2018-00039176-CU-MC-CTL Consolidated with 37-2018-00042617-CU-TT-CLT Superior Court of the State of California, County of San Diego.

approved through the legal mechanism in HSC 121349, could cause many communities deemed to be in need of SEP services to be denied access.

Policy Statement Overview

Problem Statement:

In 2018, AB 1810 was signed into law, amending HSC 121349(e). This changed the public comment period for state-authorized SEP applications from 90 days to 45 days. It is required that CCR, Title 17, Sections 7000 and 7002 be updated to reflect that change.

CCR, Title 17, Section 7002(a)(13)(A) defines one of the steps for state-authorized applicants. It states that SEP applicants must provide a signed statement attesting to “compliance with state laws, regulations and local ordinances.” Section 7014 states “the program and its staff shall operate and furnish services in compliance with all applicable state laws, regulations and local ordinances.” CCR, Title 17, Section 7002(a)(13)(A) and Section 7014 should not have included “local ordinances” as part of the regulations. This has caused numerous issues. First, it has given some local governments the impression that they have authority over the approval and oversight of state-authorized SEPs. This occurred when the City of Santa Ana moved to close Orange County Needle Exchange Program (OCNEP), a state-authorized SEP. The Department then followed all requirements in HSC 121349 and authorized OCNEP to operate a mobile outreach program. The County of Orange along with several local jurisdictions subsequently filed suit against OCNEP and the Department to void the authorization. A second issue is that some community groups applying for authorization with the state are under the mistaken impression they must be approved by local government as well as the Department in order to be authorized. As a result, community groups may be hesitant to apply for authorization if their local government has indicated that they are not interested in approving an SEP. This misunderstanding is being communicated to the public and creating false expectations for community members opposed to SEPs, who may believe that local government can halt Department authorization of syringe services in their jurisdictions.

Objectives (Goals):

The objectives of this regulatory proposal are to:

- Create consistency between HSC and CCR in defining the public comment period; and
- Correct the current regulations by removing “local ordinances” from the regulations to be in compliance with AB 604.

Benefits

Regulations are required to clarify and implement statute: these changes will improve both clarity and implementation. Additional benefits of this proposal are as follows:

- Amended regulations will be in compliance with changes to HSC 121349 made by AB 1810; and
- Will remove ambiguity and clearly define the authority of the Department to authorize and oversee state-authorized SEPs notwithstanding any other law.

Detailed Discussion of Each Regulatory Provision Proposed to be Amended

The Department must amend CCR, Title 17, Sections 7000 and 7002 by changing the public comment period from 90 days to 45 days to be consistent with HSC 121349(e).

AB 604 gave authority to the Department to authorize, as specified, certain entities to provide syringe exchange services in any location where the Department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. Prior to the passage of AB 604, only local governments had the authority to authorize SEPs.

HSC 121349(b) defines local authority and HSC 121349(c) defines the state authority. HSC 121349(b) and 121349(c) delineate separate processes for SEP authorization. CCR, Title 17, Section 7002(a)(13)(A) defines one of the steps for state-authorized applicants. It states that SEP applicants must provide a signed statement attesting to “compliance with state laws, regulations and local ordinances.” Section 7014 states “the program and its staff shall operate and furnish services in compliance with all applicable state laws, regulations and local ordinances.” CCR, Title 17, Section 7002(a)(13)(A) and Section 7014 should not have included “local ordinances” as part of the regulations, as local government does not participate in the state-authorized SEP process nor does the state participate in the local process.

This change will amend CCR, Title 17, Section 7002(a)(13)(A) and 7014 by removing the words “local ordinances.” It will not prevent local governments from authorizing applicants to provide syringe services in their jurisdictions, nor will it impose additional requirements on local governments or locally-authorized SEPs. It will allow the Department to approve applicants based on compliance with requirements set forth in HSC 121349 and on state priorities for public health and communicable disease control.

Involvement with Affected Parties

The Department's Office of AIDS (OA) held a stakeholders meeting on Thursday, November 21, to solicit input from SEPs, local governments, public health officials, and other interested parties. The Department invited local health officers and county health executives, county AIDS directors, the County Behavioral Health Association, SEP staff and volunteers, the League of California Cities (including city managers statewide) and the California State Association of Counties (including every county supervisor statewide) to attend. Twenty-three people joined the webinar and an additional four people joined in person. Participants had the chance to comment during the webinar or

via email with a deadline of November 25, 2019. Here is a summary of the comments received:

- An SEP program manager stated that the inclusion of local ordinances in the regulations that pertain to state-authorized programs is confusing and unnecessary.
- A local AIDS Director stated that the regulations as they were appeared to be sufficient.
- A question was asked via email regarding revocation of authorization. The questioner wished to know the “most viewed violations” and “how many violations before a revocation occurs.” Office of AIDS sent a response with information on the specific regulation on revocation, clarifying that “to date, no program has had their authorization revoked.”
- A comment received through email stated, “I am writing to voice my concerns on limiting Syringe Services.... These places are a welcoming and safe place for people who use drugs to come to and talk about positive change. They do not feel stigmatized and therefore are more likely to choose to not use drugs on their own terms. Forcing people to change and shaming them for how they handle trauma kills people. Positive change comes from positive interaction.”
- A comment received through email stated, “One thing that is always burdensome for us is trying to schedule the biennial report on the Board of Supervisors calendar. I think providing updates to community and supervisory groups is a great opportunity, but if there could be some flexibility for State authorized programs I think it could be helpful....perhaps for smaller programs the wording can allow for the presentation(s) to be a bit more flexible.”
- Two county supervisors from Santa Cruz County submitted a letter with the following recommendations for new or updated regulations:
 - Preventing and addressing syringe litter should be a priority;
 - Programs must report to the state biennially;
 - Prohibit SEPs from conducting syringe services in public parks and open spaces;
 - OA should consider the number of syringes already being distribute in an area, stating that in their county of only 274,000 people, 600,000 syringes were distributed last year; and
 - Programs should be overseen by medical professionals.
- Nineteen individuals each sent two separate form letters. The form letters recommended the following:
 - All SEPs must collect data on HIV and HCV and report that data to CDPH/OA.
 - OA should require all SEP participants to be tested for HIV and HCV to see if “issuing sterile injection equipment is an effective means of communicable disease prevention.
 - “It must be mandatory for all SEP entities that they offer onsite screening and testing of clients for blood borne communicable diseases and that this information be forwarded to the CDPH/ OA in addition to being made

public via the mandatory reporting laws described in the CA H&S Code 121349.2 [sic].”

- “CDPH/ OA must have all SEPs operating in the state be under the direct jurisdiction of local county health agencies in order to provide the necessary oversight for public opinion.”
- “CDPH must only consider certifying nonprofit entities applying for SEP’s [sic] in areas where current government programs do not exist.”
- “Certification from CDPH/OA for SEP’s [sic] may only be considered if the applicants are licensed health care professionals.”
- “Consider utilizing the County Jail booking process as an additional means of BBP [blood-borne pathogens] data collection.”
- “Consider networking data between county health officials and the CDPH/ OA to track data for transient populations.”
- “In areas where a local SSP [syringe services program] has been authorized by a local government agency, like here in Santa Cruz County, local control and accountability should be prioritized.”

Documents Relied Upon

1. [Assembly Bill 1810](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1810) (Ting, Chapter 34, Statutes of 2018), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1810.
2. [Assembly Bill 604](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB604) (Skinner, Chapter 744, Statutes of 2011), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB604.
3. [California Health and Safety Code Section 121349](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=121349.&lawCode=HSC), http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=121349.&lawCode=HSC.
4. [California Code of Regulations, Title 17, Section 7000](https://govt.westlaw.com/calregs/Document/IACE1B100F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)), [https://govt.westlaw.com/calregs/Document/IACE1B100F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IACE1B100F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).
5. [California Code of Regulations, Title 17, Section 7002](https://govt.westlaw.com/calregs/Document/IAD1CE540F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)), [https://govt.westlaw.com/calregs/Document/IAD1CE540F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IAD1CE540F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).
6. [U.S. Department of Health and Human Services. Federal Response – Ending the HIV Epidemic: A Plan for America](https://www.hhs.gov/blog/2019/02/05/ending-the-hiv-epidemic-a-plan-for-america.html), <https://www.hhs.gov/blog/2019/02/05/ending-the-hiv-epidemic-a-plan-for-america.html>, (as of October 2019).
7. Centers for Disease Control and Prevention. [Summary of Information on the Safety and Effectiveness of Syringe Services Programs](https://www.cdc.gov/ssp/docs/SSP-Summary.pdf), (July, 2019), <https://www.cdc.gov/ssp/docs/SSP-Summary.pdf> (as of October 2019).
8. Centers for Disease Control and Prevention. [Reducing Harms from Injection Drug Use & Opioid Use Disorder with Syringe Services Programs](https://www.cdc.gov/ssp/docs/SSP-Summary.pdf), (August,

- 2017), <https://www.cdc.gov/hiv/pdf/risk/cdchiv-fs-syringe-services.pdf> (as of October 2019).
9. California Department of Public Health (CDPH). [Issue Brief: Syringe Access Policies for California Syringe Exchange Programs, April 2017](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CDPH%20SEP%20Distribution%20Policy%20Issue%20Brief%20(April%202017%20Logos).pdf), [https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CDPH%20SEP%20Distribution%20Policy%20Issue%20Brief%20\(April%202017%20Logos\).pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CDPH%20SEP%20Distribution%20Policy%20Issue%20Brief%20(April%202017%20Logos).pdf) (as of October 2019).
 10. San Francisco Department of Public Health, Population Health Division. [Syringe Access and Disposal Services](https://www.sfdph.org/dph/hc/HCCommPubHlth/Agendas/2018/May%2015/syringeprez.pdf), (May 2018), <https://www.sfdph.org/dph/hc/HCCommPubHlth/Agendas/2018/May%2015/syringeprez.pdf> (as of October 2019).
 11. County of Orange, Orange County Flood Control District, City of Costa Mesa, City of Orange and City of Anaheim v. CDPH and Orange County Needle Exchange Program Case No. 37-2018-00039176-CU-MC-CTL Consolidated with 37-2018-00042617-CU-TT-CLT Superior Court of the State of California, County of San Diego.
 12. Doherty MC, Junge B, Rathouz P, Garfein RS, Riley E, Vlahov D. The effect of a needle exchange program on numbers of discarded needles: a 2-year follow-up. *Am J Public Health*. 2000;90(6):936–939.
 13. Belani HK, Muennig PA. Cost-effectiveness of needle and syringe exchange for the prevention of HIV in New York City. *Journal of HIV/AIDS Social Services*. 2008;7:229–40.
 14. Kong D, et al. Patient Costs, Characteristics, and Outcomes Associated with Hepatitis B and Hepatitis C Hospitalizations – California – 2011. Poster presentation at Conference of State and Territorial Epidemiologists Conference, Pasadena, California, June 2013.

Economic Impact Assessment

The Department analyzed whether and to what extent this proposal affects the following:

1. The creation or elimination of jobs within the State of California: these proposed regulations do not create or eliminate jobs but may create new job opportunities as they may provide additional opportunities for new SEPs to form.
2. The creation of new businesses or the elimination of existing businesses within the State of California: these proposed regulations do not create new businesses or eliminate existing ones but may provide additional opportunities for new SEPs to form.
3. The expansion of businesses currently doing business within the State of California: these proposed regulations may allow existing SEPs to expand into other geographic areas to respond to public health need.

4. The benefits of the regulation to the health and welfare of California residents, and increases to worker safety: these proposed regulations will not affect worker safety. They may improve the health and welfare of California residents by affording the creation of new SEPs, which have been found to reduce the transmission of HIV, HCV and other bloodborne pathogens.

Reasonable Alternatives

This regulation makes only technical, non-substantive or clarifying changes to current regulations. The Department has made the initial determination that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed.

Economic Impact Assessment or Standardized Regulatory Impact Analysis

The Department has determined that the proposed regulatory action would have no significant direct economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

Statements of Determination

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete:

The Department has determined that the proposed regulatory actions would not have a significant adverse economic impact on businesses or their ability to compete as they do not impose new requirements on existing SEPs or add new requirements to develop new SEPs.

Local Mandate

The Department has determined that the regulation would not impose a mandate on local agencies or school districts. The change clarifies the authority of local governments and the state in authorization of an SEP. It does not create new mandates. All authority was established in 2011 through passage of AB 604 and defined in HSC 121349(b) and 121349(c).

Effect on Small Businesses

The Department has determined that the only effect on small businesses would be on the additional entities (estimated at five new entities) that the Department estimates would be authorized to add syringe exchange to their services for PWID.

Housing Costs

The Department has determined that the regulation will not have an impact on housing costs.