

STAFF REPORT

City Council Business Agenda Item

DATE: March 4, 2019

TO: Honorable Mayor and Council Members

FROM: Liz Shorey, Deputy Director of Community Development

THRU: Merritt Perry, City Manager

SUBJECT: **Public Hearing to Amend the Fortuna Municipal Code, Title 8 – Health and Safety, Adding chapter 8.40, Sections 8.40.010—8.40.050, Syringe Exchange Programs and Safe Disposal of Sharps; *Ordinance 2019-733***

STAFF RECOMMENDATION:

Receive first Reading, accept public comments on amendments of Title 8- Health and Safety, Adding Chapter 8.40, Sections 8.40.010-8.40.050, which includes provisions to regulate Syringe Exchange Programs (SEPs) within the City; and consider adopting *Ordinance 2019-733* following a second reading on March 18, 2019.

EXECUTIVE SUMMARY:

Background. The State of California adopted needle and syringe exchange regulations (AB 604) to allow exchange sites in cities and counties throughout the state as a method of reducing syringe waste and to provide clean needles to reduce the transmission of HIV, viral hepatitis, and other blood borne diseases. California Health and Safety Code Sec. 121349 authorizes syringe exchange programs to operate in a city or county providing certain criteria are met and it is done so upon the approval of the county, city, or State Department of Public Health. Additionally, AB 1743 allows pharmacies or physicians to provide an unlimited number of hypodermic needles and syringes without a prescription to persons 18 years of age or older for their personal use.

The purpose of SEPs is to reduce the transmission of diseases associated with using unsterile needles and syringes, to offer drug addiction counseling and rehabilitation services, and to address improperly discarded syringes. Policies and procedures can be established, often with the input and advice of an advisory board that may be made up of trained professionals and stakeholders including health staff, law enforcement, mental health workers, rehabilitation personnel, and city and county staff.

At least forty permitted programs operate throughout the state in various cities, including within Humboldt County. The State Department of Public Health recently approved an exchange permit for Humboldt Area Center for Harm Reduction (HACHR) within Humboldt County. Currently, HACHR does not operate a syringe exchange programs (SEPs) in Fortuna.

In addition, the County’s Public Health Department SEP program is operated by their North Coast Aids Project (NorCAP), and was approved by the Board of Supervisors in 2012. In addition to

needle and syringe exchange, the NorCAP program services include HIV and hepatitis C testing, disease and overdose prevention counseling, education, and recovery services.

In an attempt to control used needle proliferation in the city, and to have some oversight on the establishment of SEPs, the City of Eureka adopted a syringe exchange program in 2018, adopting standards for quarterly reporting, referral services, clean-ups, operating distance from schools, and waste disposal practices. Through the efforts of the Eureka Police Department, Code Enforcement, Community Services, and the City Manager, meetings were held with stakeholders from DHHS, St. Joseph Hospital, Open Door Clinic, HWMA and Humboldt Center for Harm Reduction (HACHR) to discuss issues and solutions.

The Fortuna City Council, at their meeting on February 4, 2019, expressed concern for the public health crisis that the County is facing with regard to blood borne diseases and recognized that SEPs are part of a larger effort to eliminate that crisis. However, the distribution of syringes within the City threatens the health City staff and other volunteers who have the role of cleaning up syringes from public places within the City. In addition, the County's current location on Fortuna Boulevard is in a walking route between South School and the downtown area, and in a heavily trafficked commercial business area. A more appropriate place for this service would be near areas of existing medical facilities, where treatment and counseling services can be more readily available.

Staff has prepared a draft ordinance that is in response to the Council's comments at their February 4th meeting. The draft ordinance includes policies that attempt to reduce litter by requiring one-for-one issuance (one needle is handed out for every needle that is returned), notification to the City and approval of locations only in areas developed with medical facilities, prohibition within 1,000 feet of schools and parks, prohibition of deliveries within the City, commitment to clean-up programs by SEPs, sharps disposal in approved containers, and reporting to the City.

The public health officer, Dr. Donald Baird, who oversees the SEP operated by NorCAP, reviewed the draft ordinance and expressed several concerns with its standards:

- One-to-one needle issuance: The concern is that this method is not realistic for safe handling of sharps, because used needles are typically received from consumers in a sharps container, and it is not feasible for providers to open up the containers and count individual needles, as this would increase the chance for handlers to be stabbed and infected. Health care professionals who operate SEPs prefer unlimited distribution as the best means to ensure clean needles are available to reduce the spread of disease.
- Location: Potential SEP sites are severely limited and possibly completely precluded if they are to be restricted to medical sites and less than 1,000-foot from schools and parks. Presently, all of the medical sites in the City are within 1,000 feet of schools or parks. SEP providers prefer to locate in areas that are easily accessible to users, as this increases the level of participation.
- Organized clean-up events: SEPs are typically do not have the staffing or budget to organize and participate in off-site, City-wide clean-ups of used needles, other than on the site on which they operate.
- Deliveries: Prohibiting deliveries is not feasible and may not be legal, because pharmacies already are in the practice of delivering needles and syringes to patients on a regular basis along with prescription orders.

With regards to location, the ordinance does limit SEPs to at least 1,000 feet from schools and public parks, and to sites that are developed with a medical facility. Due to the restrictive nature of this requirement, staff suggests consideration of other options, such as broadening the geographic range of SEPs to certain zoning districts within the City, such as Public Facility (PF) or Commercial Thoroughfare (CT), or identifying specific areas or individual parcels on which an SEP may locate. (See attached Zoning Map for reference).

FISCAL IMPACT:

No fiscal impacts will result from allowing an SEP in the City, since they are operated by nonprofit organizations. Undetermined cost for City staff time already occurs because of needle and syringe litter clean up and other law enforcement activities related to illegal drug activities.

RECOMMENDED COUNCIL ACTION:

1. Receive staff presentation and review questions with staff.
2. Open public comment
3. Close public comment
4. Motion to hold the first reading of *Ordinance 2019-733* that includes provisions to regulate Syringe Exchange Programs (SEPs) within the City, read by title only, and continue the Public Hearing to Monday, March 18, 2019. Roll call vote.

ATTACHMENTS:

- *(Attachment A) Ordinance 2019-733—An Ordinance of the City Council of the City of Fortuna Adding Chapter 8.40, Sections 8.40.010 through 8.40-050, Syringe Exchange Programs and Safe Disposal of Sharps*
- *(Attachment B) Zoning Map*

ATTACHMENT A

ORDINANCE 2019-733

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ADDING
CHAPTER 8.40, SECTIONS 8.40.010—8.40.050, SYRINGE EXCHANGE PROGRAMS
AND SAFE DISPOSAL OF SHARPS**

WHEREAS, the City of Fortuna supports the concept of harm reduction through hypodermic syringe exchange as a benefit to the health threat incurred by spreading disease such as HIV and Hepatitis C through the sharing of needles during drug use; and

WHEREAS, there are more than forty Syringe Exchange Programs (SEPs) operating in California in a variety of settings, including health clinics, mobile vans, churches, county public health offices, as well as home delivery services; and

WHEREAS, since 1999, the California State Legislature has acted several times to expand access to sterile syringes through SEPs, authorized by local governments. In 2012, Assembly Bill (AB) 604 granted authority to the California Department of Public Health, Office of Aids to permit organizations to apply directly to the Department of Public Health for authorization to provide syringe exchange services; and

WHEREAS, syringe and needle waste represents a potential public health hazard for children, adults, and public employees-including police, fire, and parks and public works maintenance workers, through unnecessary exposure and risk of contamination and injury due to improper disposal of sharps; and

WHEREAS, the City's public parks, roads, alleys, sidewalks, trails, commercial areas, and private property have been subjected to improper disposal of sharps; and

WHEREAS, the City of Fortuna, private businesses, individuals, and organized community clean-ups have collected thousands of improperly disposed of sharps on an annual basis on public and private property; and

WHEREAS, there is no mandatory statewide stewardship program for sharps in California, and manufacturers, retailers, non-profit agencies, and producers have not provided support for a permanent collection program to date; and

WHEREAS, California Health and Safety Code Section 118286 requires that home-generated sharps be transported to a collection center in sharps containers or other containers authorized by the local enforcement agency, and prohibits the loose disposal of home-generated sharps waste in trash or recycling containers, many people continue to dispose of contaminated sharps in manners that increase the risk that others will come into contact with them; and

WHEREAS, the regulation of Syringe Exchange Programs is necessary to ensure that such programs operate in conformity with state law, demonstrate a plan and implementation for injection drug users to seek treatment for substance abuse, and require the removal of syringe litter from public and private property.

NOW, THEREFORE, the City Council of the City of Fortuna does hereby ordain as follows:

SECTION 1. DECLARATION OF INTENT

The purpose of this ordinance is to ensure public health and safety by amending Title 8 – Health and Safety, adding Chapter 8.40, Sections 8.40.010—8.40.050, standards for needle and syringe exchange programs and safe disposal of sharps.

SECTION 2. FINDINGS OF APPROVAL

The City Council has reviewed and hereby makes the following findings:

- A. The Ordinance is consistent with goals and policies of the Fortuna General Plan regarding public health and safety and avoidance of exposure to hazardous materials and waste:

Goal HS-6: To minimize the risk of loss of life, injury, serious illness, damage to property, and economic and social dislocations resulting from the use, transport, treatment, and disposal of extremely hazardous materials and hazardous materials and wastes.

Policy HS-6.1: Compliance with Hazardous Material Laws and Regulation. The City shall require that all land uses that transport, generate, use, handle, store, dispose of, and/or emit hazardous materials or waste be in compliance with all applicable, federal, state, County and local hazardous materials safety laws and regulations.

- B. Through the adoption of specific development standards, the Needle and Syringe Exchange Ordinance is designed for the protection of the public health, safety, and welfare, and balances the needs of harm reduction through hypodermic syringe exchange as a benefit to the health threat incurred by spreading disease such as HIV and Hepatitis C through the sharing of needles during drug use, with the needs of the general public including children, adults, and public employees-including police, fire, and maintenance workers in Parks and Public Works Departments through unnecessary exposure and risk of contamination and injury due to improper disposal of sharp.
- C. The City Council makes and adopts as findings the facts and conclusions set forth above in the preamble of this Ordinance and for the reasons stated in the recitals, finds that the establishment of needle exchange programs in the city constitute a current and immediate threat to the public health, safety and welfare unless the standards listed in the ordinance are established.

SECTION 3. CONFLICTS

All ordinances and parts of ordinances or resolutions, in conflict herewith, are hereby repealed to the extent of such conflicts and no further.

SECTION 4. EFFECTIVE DATE

The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

FORTUNA MUNICIPAL CODE CHAPTER 8.40 SYRINGE EXCHANGE PROGRAMS AND SAFE DISPOSAL OF SHARPS

- 8.40.010 Definitions
- 8.40.020 Regulation of Syringe Exchange Programs (SEPs)
- 8.40.030 Disposal of Sharps
- 8.40.040 Enforcement
- 8.40.050 Severability

8.40.010 DEFINITIONS.

For the purpose of this chapter, the following terms have the meanings given below.

1. “City Council” refers to the City Council of the City of Fortuna.
2. “City” means the City of Fortuna, California.
3. “City Manager” means the City Manager of the City of Fortuna and/or his or her designee.
4. “County” means the County of Humboldt, California.
5. “Drug” means: (a) articles recognized in the official United States Pharmacopoeia, the official National Formulary, the official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (c) articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and (d) articles intended for use as a component of any article specified in clause (a), (b), or (c) of this definition. Notwithstanding the foregoing sentence, “Drugs” does not include or mean medical devices, their component parts or accessories.
6. “Person” means an individual, firm, sole proprietorship, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, cooperative, or other entity of any kind or nature, however organized.

7. "Provider" means any Person that sells or otherwise furnishes Drugs or Sharps to consumers at a medical or veterinary office, clinic, hospital or approved needle-exchange program located in the City.
8. "Sharps" means one or more hypodermic needles, pen needles, intravenous needles, lancets and other devices used to penetrate the skin for drawing blood, or for the delivery of medications or Drugs.
9. "Sharps Container" means a rigid puncture-resistant container used in patient care or research activities meeting the standards of and receiving approval from the United States Food and Drug Administration as a medical device used for the collection of discarded medical needles or other sharps.
10. "Syringe Exchange Programs" (SEPs) means a program operating within the jurisdictional boundaries of the City of Fortuna that provides sterile syringes, collects used ones, or acts as a point of access to health education and care for people who inject drugs.

8.40.020 REGULATION OF SYRINGE EXCHANGE PROGRAMS (SEPs)

1. Syringe Exchange Programs shall operate in conformance with California Health and Safety Code sections 121349 through 121349.3 (or as may be amended) as part of a network of comprehensive services to combat the spread of HIV and blood-borne hepatitis infection among injection drug users.
2. A provider interested in administering a clean needle and syringe exchange program in the City shall notify the City Manager prior to beginning the program and shall comply with any program rules and regulations established by the City for administration of the program.
3. Sharps shall be issued on a one-for-one basis; one new sharp may be issued for each used sharp returned. The number of clean sharps issued is not limited by this ordinance except as may be determined by the number of used sharps returned.
4. SEPs are allowed at an approved location only. Direct delivery of sharps from SEP providers to consumers within the City is prohibited.
5. A provider shall report to the City Manager, on a quarterly basis, statistics that include but need not be limited to:
 - a) Number of needles distributed; and
 - b) Number of needles returned/collected; and
 - c) The location of the returned/collected needles; and
 - d) The number of referrals made for other services; and
 - e) The number of law enforcement incidents related to the SEP.
6. SEPs must demonstrate a plan and implementation for injection drug users to seek treatment for substance abuse; and provide referral for substance abuse treatment and other preventative health care services to participants in the program.
7. SEPs are required to clean the property on which they operate, organize and participate in clean-ups of used needles on a weekly basis, and report the results of such efforts quarterly.

8. SEPs shall issue identification cards for employees and volunteer workers for the program.
9. If the SEP is operating out of a motor vehicle, the motor vehicle shall be clearly marked with the organization or agency name, department (if applicable) and a contact phone number.
10. SEPs are not allowed to operate within one thousand (1,000) feet of a City park, and elementary and/or secondary school meeting all of the requirements of the compulsory education laws of the state or a licensed day care center.
11. Not excluding the location requirement of section 10 of this chapter, SEPs shall be located on a site that has a primary use as a medical facility or a public facility.
12. SEPs are required to insure that sharps are disposed of at the organizational level in conformance with OSHA standards. SEPs shall contract with a licensed bio-waste hauling company for disposal of sharps at no cost to the City.
13. SEPs shall implement and maintain syringe collection and disposal procedures that:
 - a. Require program participants to return used syringes to the program, and/or to dispose of them properly;
 - b. Collect sharps waste in such a way to minimize direct handling by program staff, volunteers and clients.

8.40.030 DISPOSAL OF SHARPS

1. Home-generated sharps as well as sharps generated from individual and group clean-ups shall be transported to a collection container or center that is permitted by State regulations to receive them. Loose disposal of sharps waste in trash or recycling containers is prohibited.
2. No provider shall dispose of their sharps in the City owned or provided kiosks or sharps containers.

8.40.040 ENFORCEMENT

Civil Penalties. Enforcement. The City may enforce this section in any manner permitted by law. The violation of this chapter shall be and is hereby declared a public nuisance and shall, at the discretion of the City, create a cause of action for injunctive relief.

8.40.050 SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

INTRODUCED AND FIRST READING PERFORMED on the 4th day of March 2019 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

Sue Long, Mayor

Siana Emmons, City Clerk

SECOND READING PERFORMED AND ADOPTED on the __ day of _____ 2019 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

Sue Long, Mayor

Siana Emmons, City Clerk