

ORDINANCE NO. NS-2996

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA ADDING ARTICLE XV (SYRINGE EXCHANGE PROGRAMS) TO CHAPTER 18 OF THE SANTA ANA MUNICIPAL CODE (HEALTH AND SANITATION) PROHIBITING SYRINGE EXCHANGE PROGRAMS FROM OPERATING IN THE CITY OF SANTA ANA

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

WHEREAS, the state of California, acting through the California Department of Public Health (CDPH), regulates the operation of Syringe Exchange Programs (SEPs), which serve to provide sterile syringes, collect used ones, and dispense health education for people who inject intravenous drugs; and

WHEREAS, according to the CDPH, there are more than 50 SEPs operating in California; and

WHEREAS, sections 121349 through 121349.3 of the California Health and Safety Code, and Title 17 (Division 1, Chapter 4, Subchapter 15) of the California Code of Regulations, collectively govern the operation of SEPs, which may be authorized by the state or localities under the standards enumerated therein; and

WHEREAS, since 2015, licensed pharmacies throughout California have been authorized to sell syringes to adults without a prescription with no limits on the number of syringes that may be sold, and California law further allows adults to purchase and possess an unlimited number of syringes for personal use when acquired from a pharmacy, physician, or authorized SEP; and

WHEREAS, among the operational requirements is that an SEP "shall operate and furnish services in compliance with all applicable state laws, regulations and local ordinances," 17 CCR section 7014; and

WHEREAS, from 2016 to 2018, the Orange County Needle Exchange Program (OCNEP) was certified by CDPH to operate a SEP in the Santa Ana Civic Center, functioning regularly on City-owned premises under a Memorandum of Understanding with Santa Ana; and

WHEREAS, on a sustained basis, and despite the City's pleas, OCNEP failed to properly recover and safely dispose of used hypodermic needles and syringes distributed at the Civic Center, resulting in thousands of used hypodermic needles being discarded in or on the adjacent public buildings, libraries, streets, sidewalks, parks, and waterways

both in Santa Ana and elsewhere in Orange County, as documented by the City of Santa Ana in a letter to OCNEP dated December 8, 2017; and

WHEREAS, on this basis, the City terminated its Memorandum of Understanding with OCNEP effective January 5, 2018, thereby withdrawing its permission to operate on City premises; and

WHEREAS, OCNEP subsequently applied to the CDPH to operate a new, mobile-based SEP that would operate in Costa Mesa, Santa Ana, Anaheim, and Orange, and was given approval by CDPH in mid-2018 over written objection by Santa Ana and these other jurisdictions; and

WHEREAS, California law does not explicitly require the City to authorize the establishment and/or operation of mobile or fixed site SEPs, and SEPs are not an enumerated use under the Santa Ana Municipal Code, and no provision of the City's Code specifically addresses SEPs; and

WHEREAS, the County of Orange, and the cities of Costa Mesa, Anaheim and Orange took legal action to block OCNEP's mobile SEP from operating, contending that the CDPH's approval of the mobile needle exchange violated the California Environmental Quality Act (CEQA) on the basis that the needle exchange program had resulted in syringe litter, which created environmental impacts to public health and safety that had not been addressed through CEQA environmental review; and

WHEREAS, the City of Santa Ana supported this litigation; and

WHEREAS, on October 25, 2019, following the earlier issuance of a preliminary injunction, the San Diego County Superior Court ruled in favor of the County and the other plaintiff cities, finding that the mobile SEP approved through the CDPH authorization was a "project" subject to CEQA review; and

WHEREAS, while the City of Santa Ana recognizes that properly located and regulated SEPs may help prevent the spread of blood-borne diseases, the demonstrated negative impacts of SEPs, including but not limited to the improper disposal of syringes and congregation of persons addicted to drugs near schools, libraries, parks and playgrounds, pose a grave threat to the public health, safety and welfare in Orange County that cannot be adequately mitigated; and

WHEREAS, syringe and needle waste represents a public health hazard for children, adults, and public employees, including City staff in the Police, Code Enforcement, and Public Works Departments, through unnecessary exposure and risk of injury due to improper disposal of syringes; and

WHEREAS, according to the CDPH, SEPs operate in a variety of settings from fixed sites or storefronts to mobile services, which may consist of a van or bus parked on a public street or on private property; and

WHEREAS, absent local regulation, an SEP authorized by the CDPH may be operated in locations where the impact of such operations has greater negative impacts on the public health and welfare than other locations; and

WHEREAS, pursuant to the City's police power, as granted broadly under Article XI, Section 7 of the California Constitution and Section 200 of the City Charter, the City Council has the authority to enact and enforce ordinances and regulations for the public peace, health, and welfare of the City and its residents; and

WHEREAS, the City desires to exercise its local power and authority to prohibit SEPs from operating in Santa Ana pursuant to Chapter 18 of the Santa Ana Municipal Code (Health and Sanitation); and

WHEREAS, based on the findings above, the City Council has determined that there exists a threat to public health, safety, and welfare if the City does not add Article XV to Chapter 18 of the Municipal Code to prohibit SEPs from operating in Santa Ana; and

WHEREAS, all of the aforementioned findings, reports, and evidence shall be included as part of the record before the City in this matter, and are hereby incorporated into the City Council's record and findings related to this ordinance; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment as there is no possibility it will have a significant effect on the environment and it is not a "project", as defined in Section 15378 of the CEQA Guidelines.

SECTION 1. New Article XV (Syringe Exchange Programs) is hereby added to Chapter 18 of the Santa Ana Municipal Code (Health and Sanitation) to read in full as follows:

ARTICLE XV. – SYRINGE EXCHANGE PROGRAMS

Sec. 18-653. - Purpose and Intent.

The purpose and intent of this Article is to prohibit Syringe Exchange Programs from operating in the City of Santa Ana in order to protect the public from the health and safety risks associated with such programs and with the improper disposal of syringes, needles, and related waste. For purposes of this Article, "Syringe Exchange Program" means a program authorized by the County of Orange or the California Department of Public Health and operating within the jurisdictional boundaries of the City of Santa Ana that acts as a point of access to health education and care for people who inject drugs, where hypodermic needles and/or syringes are dispensed, or where used syringes are collected pursuant to the authority of Chapter 18 of Part 4 of Division 105 of the California

Health and Safety Code, or successor section or chapter thereof, such that persons participating in and/or operating such programs are exempt from criminal prosecution for acts related to the possession of needles and/or syringes.

Sec. 18-654. - Syringe Exchange Programs Prohibited.

The operation of any Syringe Exchange Program on public and/or private property, including but not limited to a public street, alley, sidewalk or right-of-way, is prohibited in all locations, areas, and/or zoning districts in the City of Santa Ana. No use permit, variance, building permit, or any other entitlement, license or permit, whether administrative or discretionary, shall be approved or issued for a Syringe Exchange Program. Except as otherwise provided in California Health and Safety Code section 121349.1 or any successor statute, it shall be unlawful for any person or entity to own, manage, conduct, or operate, or as a landlord or land owner (or as such landlord or land owner's agent, property manager or similar person having control over real property on behalf of its owner) to allow or permit to exist, or be established, conducted, operated, owned or managed on or within real property owned or controlled by such person, any Syringe Exchange Program, or to participate as a landlord, lessor, land owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any Syringe Exchange Program. Each day a violation of this provision of this Article is committed, or permitted to continue, shall constitute a separate offense.

Sec. 18-655. - Penalty.

Except as otherwise provided by California Health and Safety Code section 121349.1, or any successor statute, any person violating or failing to comply with any of the provisions of this Article is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars or by imprisonment not to exceed six months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of the provisions of the Article is committed.

Alternatively, any violation of this Article may be enforced by the City, the City's Police Department, or a code enforcement officer in accordance with the procedures set forth in Chapter 1 of this Code, relating to the issuance of citations, imposition of administrative fines, right to appeal, and the right to an administrative hearing, and shall be subject to the imposition and payment of administrative fine(s).

Sec. 18-656. - Conformance to Law.

The provisions of this Article shall be interpreted in accordance with otherwise applicable state and federal law(s) and will not apply if determined by the City to be in violation of any such law(s).

SECTION 2. The City Council finds and determines that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment as there is no possibility it will have a significant effect on the environment and it is not a "project," as defined in Section 15378 of the CEQA Guidelines.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentence, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 4. Neither the adoption of this ordinance nor the repeal hereby of any other ordinance shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof.

SECTION 5. This ordinance shall become effective thirty (30) days after its adoption.

SECTION 6. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this 6th day of October, 2020.


Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: 
John M. Funk
Assistant City Attorney

AYES: Councilmembers Bacerra, Mendoza, Penaloza, Pulido, Sarmiento, Solorio, Villegas (7)

NOES: Councilmembers None (0)

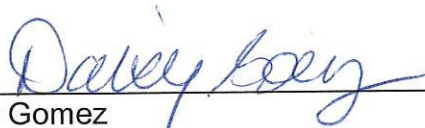
ABSTAIN: Councilmembers None (0)

NOT PRESENT: Councilmembers None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-2996 to be the original ordinance adopted by the City Council of the City of Santa Ana on October 6, 2020, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 10-19-2020



Daisy Gomez
Clerk of the Council
City of Santa Ana