



OROVILLE CITY COUNCIL

Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

March 10, 2020
SPECIAL MEETING
OPEN SESSION 10:00 AM
AGENDA

CALL TO ORDER / ROLL CALL

Council Members: David Pittman, Eric Smith, Linda Draper, Art Hatley, Janet Goodson, Vice Mayor Scott Thomson, Mayor Chuck Reynolds

OPEN SESSION

1. Pledge of Allegiance
2. Adoption of Agenda

REGULAR BUSINESS – Action Calendar

1. **CONSIDERATION OF AN ORDINANCE OF THE CITY OF OROVILLE IMPOSING A BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE PROGRAMS WITHIN THE CITY OF OROVILLE**

The Council will consider the approval of an ordinance related to a needle exchange program ban in the City of Oroville.

RECOMMENDATION

Approve Ordinance No. 1842 - AN ORDINANCE OF THE CITY OF OROVILLE IMPOSING A BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE PROGRAMS WITHIN THE CITY OF OROVILLE.

Direct Staff to prepare letters for Council consideration to the City of Chico and the State Department of Public Health regarding the needle exchange program in the City of Chico

ADJOURNMENT

Adjourn to March 17, 2020 at 5:00 P.M. in the Oroville City Council Chambers

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All meetings are recorded and broadcast live on cityoforoville.org and YouTube.



CITY OF OROVILLE STAFF REPORT

TO: MAYOR CHUCK REYNOLDS AND COUNCIL MEMBERS

**FROM: BILL LAGRONE, CITY ADMINISTRATOR
SCOTT E. HUBER, CITY ATTORNEY**

**RE: CONSIDERATION OF AN ORDINANCE OF THE CITY OF OROVILLE
IMPOSING A BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE
PROGRAMS WITHIN THE CITY OF OROVILLE**

DATE: MARCH 10, 2020

SUMMARY

The Council will consider the approval of an ordinance related to a needle exchange program ban in the City of Oroville.

DISCUSSION

This matter was requested for consideration by Mayor Reynolds and Council Member Pittman. The California Department of Public Health (CDPH) is authorized by Health and Safety Code section 121349 et seq. to approve a needle exchange program (NEP). The CDPH has authorized Northern Valley Harm Reduction Coalition (NVHRC) to provide needle exchange services in the City of Chico. Local law enforcement officers have reported an increase in property destruction and improper needle disposal related to the Chico NEP, as well as some syringes issued by NVHRC in Chico have been improperly disposed of in Oroville, Gridley and throughout Butte County.

In response to several questions posed by Assembly Member Gallagher, the CDHP responded by letter dated February 27, 2020, a copy of which is attached to this staff report. According to that letter, the CDPH intends to discuss with NVHRC "expanded services in the Oroville and Gridley areas" for a NEP.

The proposed ordinance would enact a ban on NEPs in the City of Oroville. The Council will consider approval of the Ordinance.

FISCAL IMPACT

None

RECOMMENDATION

1. Approve Ordinance No. 1842 - AN ORDINANCE OF THE CITY OF OROVILLE IMPOSING A BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE PROGRAMS WITHIN THE CITY OF OROVILLE.
2. Direct Staff to prepare letters for Council consideration to the City of Chico and the State Department of Public Health regarding the needle exchange program in the City of Chico

ATTACHMENTS

Ordinance No. 1842

Letter from California Department of Public Health dated February 27, 2020

ORDINANCE NO. 1842

AN ORDINANCE OF THE CITY OF OROVILLE IMPOSING A BAN ON THE ESTABLISHMENT OF NEEDLE EXCHANGE PROGRAMS WITHIN THE CITY OF OROVILLE

WHEREAS, the California Department of Public Health (CDPH) may authorize a Needle Exchange Program (NEP) in local communities pursuant to Health and Safety Code section 121349, et seq.; and

WHEREAS, CDPH has certified Northern Valley Harm Reduction Coalition (NVHRC) to provide needle exchange services in the City of Chico; and

WHEREAS, local law enforcement officers have seen an increase in property destruction and improper needle disposal related to the Chico NEP; and

WHEREAS, some syringes issued by NVHRC in Chico have been improperly disposed of in Oroville, Gridley and throughout Butte County; and

WHEREAS, according to a February 27, 2020 letter from CDPH to Assembly Member Gallagher, CDPH intends to discuss NVHRC “expanded services in the Oroville and Gridley areas”; and

WHEREAS, improper collection and disposal of used hypodermic needles and syringes is inimical to, and presents an imminent threat to, the health, property, safety and welfare of the public; and

WHEREAS, pursuant to the City’s police power, as granted broadly under Article XI, Section 7 of the California Constitution and Oroville City Charter, the City Council of the City of Oroville 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, Government Code Section 38771 authorizes the City, through its legislative body, to declare actions and activities that constitute a public nuisance; and

WHEREAS, the Oroville Municipal Code sets forth all the regulatory and penal ordinances and certain of the administrative ordinances of the City. As to matters concerning land use, and of buildings thereon, Title 17 (Zoning) of the Oroville Municipal Code is intended to promote the growth of the City in an orderly manner and promote and protect the public health, safety, peace, comfort and general welfare in conformance with the City’s General Plan; and

WHEREAS, needle exchange programs are not an enumerated use under the Zoning Code and the Oroville Municipal Code does not specifically address or regulate needle exchange programs within the City of Oroville; and

WHEREAS, absent a local regulation, a needle exchange program may be operated in

virtually any location in the City; and

WHEREAS, the operation of a needle exchange program carries the risk of negatively impacting the Goals of the Safety Element of City's General plan including but not limited to decreasing the risk of exposure to hazardous materials and hazardous waste; and

WHEREAS, the City Council finds that the commencement, establishment and/or operation of a needle exchange program would pose a current and immediate threat to the public health, safety or welfare, and that a moratorium on the issuance of permits, variances, building permits, business licenses, certificates of occupancy, and any other applicable entitlements related to a needle exchange program is therefore necessary; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OROVILLE DOES ORDAIN AS FOLLOWS:

SECTION 1.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3) of the State CEQA Guidelines because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, because 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 State CEQA Guidelines.

SECTION 2.

No person shall establish, operate, conduct, or engage in a needle exchange program, as defined by Health and Safety Code section 121349, et seq. within the City of Oroville.

SECTION 3.

No property in any zone of the City is to be used for purposes of a needle exchange program. The use of any property for such purpose shall be a public nuisance and may be abated as provided in the Oroville Municipal Code or pursuant to state law. A violation of this Ordinance shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of separate action for injunctive relief as well as any other available civil remedies.

SECTION 4.

The City Council of the City of Oroville hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance independent of the elimination of any such portion as may be declared invalid. If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase irrespective

of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION 5.

The City Clerk shall attest to the adoption of this Ordinance and cause same to be published in the manner required by the City Charter.

This Ordinance shall take effect on the 30th day after its adoption.

PASSED AND APPROVED by the Oroville City Council at a special meeting held on this 10th day of March, 2020, by the following vote:

YES:

NOES:

ABSTAIN:

ABSENT:

Chuck Reynolds, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott E. Huber, City Attorney

Bill LaGrone, City Clerk



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

February 27, 2020

The Honorable James Gallagher
California State Assembly
State Capitol, Room 5128
PO Box 94249-0003
Sacramento, CA 94249

Dear Assembly Member Gallagher,

Thank you for your letter of February 18, 2020, regarding the Northern Valley Harm Reduction Coalition (NVHRC), a private, community-based organization that CDPH has authorized to conduct syringe services in Chico pursuant to California Health and Safety Code 121349. What follows are our answers to your questions, quoted from your letter.

1. "Underage Distribution. Health and Safety Code section 11364.5 establishes 18 as the minimum age to have access to drug paraphernalia. ... What is the minimum age to distribute and receive needles through programs established under HSC section 121349? What will the Department do to investigate claims of underage distribution, and what are the penalties for underage distribution?"

Regarding the legality of syringe access by minors, Health and Safety Code section 11364(c) states that:

"... as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section shall not apply to the possession solely for personal use of hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source

that is authorized by law to provide sterile syringes or hypodermic needles without a prescription."

As such, syringes distributed by syringe exchange programs, physicians, or pharmacists are not drug paraphernalia under state law, and the subsequent statute 11364.5 does not apply to syringes distributed by or obtained from syringe exchange programs. This policy allows Californians to protect themselves from exposure to communicable disease irrespective of their age. California law similarly allows minors to access sexual health services in order to prevent or treat HIV and sexually transmitted infections.

The United States, including California, has experienced an increase in injection and other drug use in recent years. This phenomenon has led to increases in HIV and viral hepatitis transmission, wounds and infections related to non-sterile injection, and opioid and stimulant drug overdose deaths, including in Butte County. This includes, unfortunately, people in their teens.

A 2019 study by the Urban Institute in partnership with the California Department of Health Care Services, for example, estimated that Butte County residents age 12 and older had the highest rate of opioid use disorder of any county in California at 2.7%, or 35% higher than the state average, and that more than 2,000 county residents do not have access to opioid use disorder treatment due to a lack of health care providers.¹ Hepatitis C virus (HCV) infections, which predominately occur through sharing of used injection equipment, have increased sharply among young people in Butte County in recent years, although no cases have been detected among minors: between 2011-2015, chronic HCV diagnoses among 20-29 year olds in Butte County increased by 89% among women and 107% among men.² Overall, in 2016 Butte County's rate of new HCV diagnoses was 15th among California counties.³

CDPH's goal – shared by local, community-based harm reduction programs like NVHRC – is that young people at risk of harm from injection drug use have access to tools to protect their health and safety if they are currently injecting drugs, and to health care and other services in order to support them at any

¹ Urban Institute. California Opioid Use Disorder and Treatment Needs: Butte County, 2019 Fact Sheet.
<https://www.urban.org/sites/default/files/2019/11/05/butte.pdf>

² CDPH. Butte County – Chronic Hepatitis C: Cases and Rates of Newly Reported Cases, 2011-2015
https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Converted_Butte_HCV.pdf

³ CDPH. Chronic Hepatitis C, California, 2016.
https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/SurvReport_HCV_2016.pdf

stage of drug use, up to and including abstinence. That is why all syringe services programs authorized by CDPH provide additional services such as opioid overdose prevention, HIV and hepatitis C testing, and collaborate closely with other health and social service providers in order to link at-risk people to care. NVHRC, for example, routinely refers people to Chico's Enloe Medical Center and other providers that offer buprenorphine treatment for opioid use disorder.

2. "Improper Disposal. Local law enforcement officers have described a rapidly deteriorating situation stemming from the NVHRC syringe distribution program. Officers have seen an increase in property destruction and improper disposal. CDPH required NVHRC, as a condition of approval, to clean up any reported syringe litter within a reasonable time frame. What does CDPH consider a 'reasonable time frame' for NVHRC to clean up reported syringe litter?"

3. "Violating Terms of Operation. CDPH required NVHRC, as a condition of approval, to operate a hotline for the public to report improperly disposed syringes. However, the hotline is not adequately staffed, resulting in law enforcement officers now being taken off the beat in order to safely collect improperly discarded syringes. Additionally, NVHRC syringes have been found in Oroville, Gridley, and throughout Butte County. However, NVHRC is refusing to clean up these needles outside the city of Chico. Does this violate the CDPH terms of operation? Should the NVHRC permit be revoked until the organization can get a handle on reporting and syringe collection?"

CDPH takes very seriously the issue of syringe litter in communities, which typically originates from a number of sources not limited to syringe services programs. CDPH was in communication with Chico Police Department (CPD) leadership before and during the time NVHRC was authorized to provide syringe services, and our staff will follow up directly with the Department for more information on possible issues related to syringe litter and officers collecting syringes. NVHRC met with Chico Police Department officials on February 19, and has told CDPH that they discussed a variety of ways to strengthen communication about the program, including by requesting that CPD direct syringe cleanup requests that they receive to NVHRC. NVHRC and CPD are instituting regular meetings, the next of which is scheduled for March 11, 2020. In addition, CDPH is planning to conduct an evaluation of syringe disposal needs among people who use NVHRC's services, which will help identify ways that the program may increase access to disposal services. Our staff will meet with

NVHRC on this subject during the first week of March and expects to have an evaluation report available in Summer 2020.

NVHRC's reporting system for syringe litter is advertised on their website (<https://nvhrc.com/syringe-litter-report-line>) and was functioning on the day we received your letter. Staffing, response times, and service area for NVHRC's syringe collection system is at the discretion of the program. After reviewing program logs, NVHRC reported to CDPH on February 19, 2020, that while their response time varies depending on the time and location of a report, the average response time since their SSP authorization has been 2 hours.

NVHRC currently offers syringe access services at a single location, once per week in the city of Chico. People who utilize NVHRC likely include residents of neighboring communities that do not offer harm reduction services. Currently, NVHRC's resources permit them to conduct syringe collection services only in the city of Chico. NVHRC told CDPH that they have received two requests from Oroville (and none from Gridley to date); one of the callers was directed to local agencies, and the other from a blocked number to which they could not respond. CDPH staff have been in regular contact with NVHRC regarding their operations and have no reason to believe that the organization has violated any term of CDPH's syringe services authorization or the programmatic requirements described in Health and Safety Code 121349, including with regard to syringe collection activities.

We will discuss with NVHRC the possible need for expanded services in the Oroville and Gridley areas, where, as you note, there may be residents who inject drugs but who do not have sufficient access to services. Indeed, NVHRC's original impetus for organizing a syringe exchange program in Chico was in response to existing syringe litter – the group collected and disposed of more than 7,000 syringes in the months before CDPH authorized them to distribute syringes – and the presence of syringe litter in an area is often one indicator of the need for new harm reduction services.

Thank you for your interest in this matter. If you have additional questions, please feel free to reach out to me or through Monica Wagoner, Deputy Director for Legislation at monica.wagoner@cdph.ca.gov.

Sincerely,



Sonia Y. Angell, MD, MPH
Director, California Department of Public Health
State Public Health Officer