

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING CHAPTER 4.110 TO TITLE 4 OF THE ANAHEIM MUNICIPAL CODE (SYRINGE EXCHANGE PROGRAMS) PROHIBITING SYRINGE EXCHANGE PROGRAMS FROM OPERATING IN THE CITY OF ANAHEIM AND FINDING AND DETERMINING THAT THIS ORDINANCE IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 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 PURSUANT TO CEQA GUIDELINES SECTIONS 15060(C)(2), 15060(C)(3) AND 15378.

WHEREAS, according to the California Department of Public Health, there are more than fifty Syringe Exchange Programs (SEPs) operating in California that provide sterile syringes to, and collect used syringes from, people who inject drugs; and

WHEREAS, California Health and Safety Code Section 121349 et seq. provides that a SEP may be authorized to operate by a county, city government, or the California Department of Public Health (CDPH); 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. Furthermore, California law 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, in 2016, the Orange County Needle Exchange Program (OCNEP) was certified by CDPH to provide needle exchange services in the Santa Ana Civic Center. A Memorandum of Understanding between the City of Santa Ana and OCNEP provided for OCNEP to operate a SEP in the City of Santa Ana. In 2017, the City of Santa Ana terminated that SEP due to the public health threat posed by a dramatic increase in improperly discarded syringes in and around the Santa Ana Civic Center and Santa Ana Library; and

WHEREAS, in 2018, the City of Anaheim was notified that CDPH had authorized OCNEP to provide mobile needle exchange services in Anaheim commencing on August 6, 2018 in a large block area in Anaheim that currently consists of multi-family, educational, industrial, commercial and public recreational uses; and

WHEREAS, Pursuant to Section 7014 of Title 17 of the California Administrative Code, any SEP authorized by CDPH to operate in the City must comply with applicable local ordinances; and

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

WHEREAS, in response to the notification from CDPH that it had authorized OCNEP to operate in Anaheim, and because the City had not previously adopted any regulations for the operation of SEPs, on August 28, 2018, the City adopted Ordinance No. 6445 imposing a moratorium on SEPs in Anaheim, which moratorium was extended to August 29, 2019 with the adoption of Ordinance No. 6446 on October 9, 2018, and further extended to August 29, 2020 with the adoption of Ordinance No. 6468 on August 27, 2019; and

WHEREAS, although State law and the Anaheim Municipal Code require that used syringes be transported to a collection center in containers, and prohibits the loose disposal of home-generated syringe waste in trash or recycling containers, people continue to dispose of contaminated syringes in manners that increase the risk that others will come into contact with them; and

WHEREAS, improper disposal of used hypodermic syringes and needles has been documented in parks, roads, sidewalks, trails and private property in Anaheim; and

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

WHEREAS, according to 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 400 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 Anaheim pursuant to Title 4 of the Anaheim Municipal Code (Business Regulation); 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 Chapter 4.110 to the Municipal Code to prohibit SEPs from operating in Anaheim; 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, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.* herein referred to as "CEQA") and the State of California Guidelines for Implementation of the California Environmental Quality Act (commencing with Section 15000 of Title 14 of the California Code of Regulations; herein referred to as the "State CEQA Guidelines"), the City is the "lead agency" for the preparation and consideration of environmental documents for 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 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 CEQA Guidelines.

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

SECTION 1. That new Chapter 4.110 (Syringe Exchange Programs) be, and the same is, hereby added to Title 4 of the Anaheim Municipal Code (Business Regulation) to read in full as follows:

**CHAPTER 4.110     SYRINGE EXCHANGE PROGRAMS**

---

**Sections:**

- 4.110.010     Purpose and Intent**
- 4.110.020     Syringe Exchange Programs Prohibited**
- 4.110.030     Penalty**
- 4.110.040     Conformance to Law**

**4.110.010     PURPOSE AND INTENT.**

The purpose and intent of this chapter is to prohibit Syringe Exchange Programs from operating in the City of Anaheim 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 chapter, "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 Anaheim 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.

#### 4.110.020      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 Anaheim. 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 & Safety Code § 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 chapter is committed, or permitted to continue, shall constitute a separate offense.

#### 4.110.030      PENALTY.

Except as otherwise provided by California Health & Safety Code § 121349.1, or any successor statute, any person violating or failing to comply with any of the provisions of this chapter 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 chapter is committed.

Alternatively, any violation of this Chapter may be enforced by the City, the City's Police Department or an enforcement officer in accordance with the procedures set forth in Chapter 1.20 (Civil Citations) 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).

#### 4.110.040      CONFORMANCE TO LAW

The provisions of this chapter 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. ENVIRONMENTAL REVIEW.

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 3. SEVERABILITY.

The City Council of the City of Anaheim 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 herefrom 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 thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional

SECTION 4. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations 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. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 5. CERTIFICATION; PUBLICATION BY CLERK.

The City Clerk shall certify to the passage of this ordinance and shall cause this ordinance or a summary thereof to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the \_\_\_\_ day of \_\_\_\_\_, 2020, and passed and adopted as an urgency measure on that date, by the following roll call vote, and shall be and become effective immediately:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

By: \_\_\_\_\_  
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF ANAHEIM

137319 / LM