



CITY OF CLEARLAKE

City Council

STAFF REPORT

SUBJECT: Discussion and Direction Regarding Regulation of Syringe Services and Drug Smoking Supply Distribution Program in Clearlake

MEETING DATE: 11/4/2021

SUBMITTED BY: Andrew White, Chief of Police

PURPOSE OF REPORT: ☐ Information only ☒ Discussion ☒ Action Item

WHAT IS BEING ASKED OF THE CITY COUNCIL/BOARD:

The City Council is being asked to provide direction to staff regarding the operation of Syringe Services Programs (SSPs), which have expanded to the distribution of drug smoking pipes and paraphernalia, in the City of Clearlake.

BACKGROUND/DISCUSSION:

Late last year, the police department sought feedback on a proposed renewal of the SSP authorization for Community Outreach Matters (COM) in the city by the California Department of Public Health (CDPH). Concerns raised by the community included the impact on our neighborhoods, issues regarding the sites, our youth, and an increase in discarded needles despite the intent to be an "exchange".

This feedback was shared with the CDPH along with a request for the applicant to better address the disposal issues, reduce the distribution sites and engage with service providers like The Hope Center. The city additionally inquired with CDPH regarding whether an environmental impact report was done pursuant to the California Environmental Quality Act (CEQA). COM was ultimately not reauthorized by CDPH and ceased operation in April 2021. A recent change in state law exempted these programs from environmental review, however, during the legislative process, a provision to exempt the providing of these services from being deemed a public nuisance was removed from the final legislation.

Last week we learned that Any Positive Change (APC) was conducting syringe exchange operations in the City of Clearlake and that their operation expanded to include the distribution of glass smoking pipes for drugs, including methamphetamine.

Staff contacted CDPH to inquire regarding the status of APC with respect to the city. Staff learned that APC is not a state SSP, but rather operates under authorization granted by the Lake County Board of Supervisors (Exhibit A – LCBOS Resolution 2018-42). Thus, there was no engagement from CDPH with the city or our community regarding APC typical with a CDPH SSP.

The city obtained a copy of the enabling resolution for a needle exchange from the Lake County Board of Supervisors (2008-42). The authorization refers specifically to a clean needle and syringe exchange program. The resolution requires an annual report regarding the status of the program, including statistics on blood-borne infections associated with needle sharing activity and an opportunity for public comment, including from law

enforcement, so that potential adverse impacts on the public welfare are addressed and mitigated. Based on an agenda search, an update was last presented on March 6, 2018. The update focused on the needle exchange as well as naloxone, which is now widely carried by law enforcement personnel in Lake County for responding to drug overdoses.

Expansion of Safe Smoking Supplies

In January 2020, the CDPH expanded the supplies made available for syringe exchange programs to include “glass pipes, foil and copper wire filters, among other materials” as a harm reduction service. These items support the smoking of methamphetamine, crack cocaine and heroin.

According to material provided by CDPH, they have determined these drug supplies may help individuals avoid initiating injection drug use and may allow people who inject drugs to transition from injection to safer modes of administration. They also believe these “safer smoking supplies” may reduce the risk of respiratory infections and injuries from damaged pipes. The material provided offered no information regarding the potential harm to the public by the increased prevalence of these supplies. The availability of drug ingestion supplies from CDPH varies based on their funding.

CDPH explained that California Health and Safety Code § 121349.1 exempts syringe service program staff, volunteers and participants from prosecution for the possession of “safer smoking materials”, including the pipes and related paraphernalia, from any authorized syringe service program in California.

According to data provided from Any Positive Change to the city, they received a large number of pipes at the end of fiscal year 2020/21 from the California Clearinghouse. They indicated prior to glassware dispensing, they averaged 6,500-8,000 syringes. After dispensing glassware, they indicate their dispensing dropped to 3,000-4,000. Data has not been provided regarding the impacts on the program with respect to reducing communicable diseases in the local community nor any local, evidence-based studies conducted over the relatively long term of operation of the original needle exchange as it relates to the communicable disease outcome.

Community Input

The Police Department published information regarding this latest development on social media. To date, the article has reached over 41,000 people, had over 18,000 engagements and received over 600 comments. There were a variety of concerns raised as well as information provided from proponents of the program regarding a community benefit. Resoundingly, significant concerns were expressed, including feedback from persons who have recovered from addiction, regarding the harms this expansion can cause. Numerous comments indicated a desire for community members to be able to voice their concerns at a City Council or Board of Supervisors meeting.

Board of Supervisors

As of the writing of this report, it is staff’s understanding that the Board of Supervisors will be taking this item up at their next meeting. It is anticipated they will consider a moratorium and/or amendments to their existing program operation and add to the authorization framework to amongst other things, ensure community feedback is considered with respect to these operations as well as city approval for operations occurring in the city limits. At the time of the Council Meeting, staff will update the Council regarding any action or inaction by the Board regarding this.

Authorization in the City

The property owner where APC was conducting their exchange in the city limits severed the relationship and APC’s activities are now occurring in the unincorporated areas of the county. Although the county did establish a needle exchange program, the resolution would cover only the unincorporated areas of the county. With

respect to the City, Health and Safety Code §121349 provides that an SSP may be established within a city by action of the City Council or by direct authorization by the CDPH. As discussed earlier, with the non-renewal of COM's SSP, there are no CDPH authorized SSPs approved for operation in the city and the City Council has not authorized an SSP under the authority of §121349.

If APC desired to operate in the City of Clearlake's jurisdictional boundaries, they could seek authorization for such a program through CDPH. In that case, consistent with the law, staff would anticipate an interactive, consultative based process with opportunity for public comment and engagement, consistent with what was experienced with COM's process. Alternatively, they could ask the City Council to authorize an SSP program, in which case staff would need to develop a program framework, policies and procedures, reporting and appropriate oversight. Staff does not recommend the City Council pursue establishing an SSP under its authority given CDPH's existing program framework.

OPTIONS:

Staff is seeking direction from the City Council on a path forward. Staff is offering the following options, but also believes that public comment at this meeting along with deliberations by the City Council may reveal other options.

1. The Council may decide to not take any legislative action. As discussed, there are no SSPs authorized to operate in the city limits and APC ceased their operation due to loss of the distribution site. If an application for an SSP to operate in Clearlake was submitted to CDPH, the Council could consider action at that time. One consideration, however, is that CDPH would not be bound to accept any of the feedback. Based on prior experience, issues may arise around where distribution sites would be located, including potentially near sensitive areas including, but not limited to, schools, parks and playgrounds. If the Council decided to take legislative action, an emergency ordinance would need to be implemented.
2. The Council may direct staff to prepare an ordinance regarding SSPs with respect to public nuisance provisions and land use. The City possesses inherent authority, through the Council, to declare actions and activities as public nuisances. The City has the authority to make and enforcement police, sanitary and other ordinances and regulations, and to enact regulations regarding land use to protect the public health, safety, peace, comfort and general welfare.

Cities across California have enacted ordinances regarding SSPs. The Cities of Biggs, Chico, Marysville, Oroville, Paradise, Santa Ana, Wheatland, Yuba City and Sutter County are a sampling of jurisdictions that have enacted complete bans on SSPs. The Cities of Costa Mesa and Anaheim enacted moratoriums followed by permanent bans.

- a. *Ban*: Enact a ban on needle exchange operations within the City based on land use and public nuisance findings regarding the deleterious effects on the community at large.
- b. *Moratorium*: Enact a moratorium to provide an opportunity to further study the issue and craft regulations that consider all sides of the issue and provide opportunities to address and mitigate concerns regarding the programs.
- c. *Regulatory*: Enact an ordinance containing regulatory framework regarding SSP operation within the city. Additional research from the City Attorney would be required to determine the scope of this type of an ordinance. Presumably, the ordinance would focus on land use related issues such as establishing restrictions regarding the operation locations of SSPs.

Additionally, although Health and Safety Code §121349.1 prohibits *criminal prosecution* regarding the possession, furnishing or transfer of items provided under the SSP, the Council

could enact regulations related to these items subject to an administrative citation (a non-criminal violation).

FISCAL IMPACT:

☒ None ☐ \$ Budgeted Item? ☐ Yes ☐ No

Budget Adjustment Needed? ☐ Yes ☐ No If yes, amount of appropriation increase:

Affected fund(s): ☐ General Fund ☐ Measure P Fund ☐ Measure V Fund ☐ Other:

Comments:

STRATEGIC PLAN IMPACT:

☒ Goal #1: Make Clearlake a Visibly Cleaner City

☒ Goal #2: Make Clearlake a Statistically Safer City

☐ Goal #3: Improve the Quality of Life in Clearlake with Improved Public Facilities

☒ Goal #4: Improve the Image of Clearlake

☐ Goal #5: Ensure Fiscal Sustainability of City

☒ Goal #6: Update Policies and Procedures to Current Government Standards

☐ Goal #7: Support Economic Development

SUGGESTED MOTIONS:

N/A