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June 25, 2018

SENT VIA U.S. MAIL AND EMAIL

Carol Crump, MFT
California Department of Public Health
PO Box 997377, MS 0500
Sacramento, CA 95899-7377

Email: SEPApplication@cdph.ca.gov

Dear Ms. Crump:

This office serves as City Attorney to the City of Costa Mesa ("City") and provides the following public comment related to the Orange County Needle Exchange Program's application to operate a needle exchange in the City of Costa Mesa.

Title 17 California Code of Regulations Section 7004 provides for the denial of an application to operate a needle exchange in the event that:

- (a) Information submitted in the application is incorrect or incomplete,
(b) The applicant does not meet all the requirements listed in Health and Safety Code Section 121349,
(c) Evidence of projected harm to public safety, presented by local law enforcement official(s), is, in the department's judgment, greater than evidence of projected benefits to public health.

For the reasons set forth below, the City respectfully requests the California Department of Public Health ("DPH") deny OCNEP's application in that (1) the information submitted in OCNEP's application is incorrect or incomplete; (2) OCNEP does not meet all of the requirements listed in Health and Safety Code Section 121349; and (3) the evidence of harm to public safety presented by the Costa Mesa Police Department and Santa Ana Police Department demonstrate far greater harm than evidence of benefits to public health; the details of which are described in greater detail below.

I. Information Submitted in the Application is Incorrect or Incomplete

A. Days and Hours of Operation

OCNEP's application is incorrect or incomplete as it pertains to its hours of operation. On the one hand, under *SEP Locations, Days and Hours of Operation* of OCNEP's application, the organization requests to operate in Costa Mesa "every first Friday in Costa Mesa from 1-3 pm..." however, in another area, OCNEP proposes a far greater time period of "daily between the hours of 10 AM and 5 PM." There is a vast difference between a 2 hour per month operation proposed, on the one hand, and up to 210 hours per month proposed, on the other hand. This gross disparity between the two time periods raises a number of questions. If there is a need for a daily operation from 10-5 pm, why does the application not propose a brick and mortar stationary location as opposed to a mobile dispensary that covers a ¼ to ½ mile radius to operate? How would the applicant go about ensuring the safe recovery and disposal of used syringes with the operation of a mobile dispensary operating daily in various locations on a daily basis? Has the applicant demonstrated an adequate need for a 10-5 daily operation in 4 separate cities throughout Orange County? Given these significant questions, the application is incomplete and should be denied.

B. Neighborhood or Homeowner Association Information

The OCNEP application states that there are "No HOA or NA in the blocks we've selected. The closest ones are Newport Crest (1.6 miles south) and Pacific Ave (2 miles north)". This is clearly not the case as evidenced by the outpouring of public concern DPH received once the public was made aware of OCNEP's application. Note that OCNEP proposes to operate within an approximately ½ mile radius that includes at least two 55+ senior multi-unit living communities, Play Port Mobile Village and Greenleaf Park, not to mention Whittier Elementary School which sits just outside the northern boundary proposes and many of which include homeowner's associations and/or a parent teacher association. Yet, none of these entities are identified in OCNEP's application and would not have been notified, but for, the outreach that was conducted by the City of Costa Mesa. A more thorough though process and investigation as part of the application process would've uncovered these groups. Instead, the application is incomplete and omits key public interest groups DPH should be aware as part of its decision making process.

II. The Applicant Does Not Meet All the Requirements Listed in Health and Safety Code Section 121349

Health and Safety Code Section 121349 requires the applicant to demonstrate the ability to do a number of things, many of which are not supported by this applicant. Specifically, Section 121349(c)(3)(C) requires the applicant to "[p]rovide for the safe recovery and disposal of used syringes and sharps waste from all of its participants." As demonstrated in photographs, letters and other documentary evidence of OCNEP's operation within the Santa Ana Civic Center, it is clear that OCNEP is not able to provide for the safe recovery and disposal of used syringes and sharp waste from all of its participants" within a fixed location and that evidence in the State Public Health Service's possession should be a part of the record as DPH makes its decision on OCNEP's current application.

Additionally, in spite of serious issues related to OCNEP's operation in the Santa Ana Civic Center, OCNEP's application is devoid of any evidence or information as to how it will improve its operation so that the threats to the public health and safety of the community that occurred within the Santa Ana Civic Center do not also occur here. It is important to point out that the OCNEP's application is on a far grander scale than their prior, Santa Ana Civic Center, operation which was discontinued. Just to name a few distinctions, the Santa Ana Civic Center was in a centralized fixed location which, in theory, would've allowed them to pick up used needles during and after their hours of operation. In this case, however, the area proposed is far greater with an operation that is *mobile* and that covers an area of approximately ¼ to ½ mile making it far more difficult to recover and dispose of used syringes. Another distinction is that OCNEP's current application is on a much grander scale-4 mobile dispensaries in multiple cities while their prior operation was in the City of Santa Ana alone. Given OCNEP's failure to meet this criteria in Santa Ana, and its failure to demonstrate how it will avoid these deficiencies here, it is clear that OCNEP does not meet the criteria in Health and Safety Code Section 121349.

III. **Evidence of projected harm to public safety, presented by local law enforcement official(s)**

Finally, all of the photographs, letters and other written correspondence provided by the City of Santa Ana and Santa Ana Police Department related to OCNEP's operation in the Santa Ana Civic Center demonstrate that the harm to the public safety exceeds the public health benefit of OCNEP's operation of four (4) mobile dispensaries covering a far greater area than their prior operation which was terminated due to numerous issues. Moreover, as indicated above, OCNEP's application fails to explain what improvements it would make in its operation so as to ensure the same programs do not occur with this much expanded operation. Again, given these deficiencies, it is clear that the harm to public safety exceeds the public benefit.

For the foregoing reasons, the City Attorney's Office respectfully requests that DPH deny OCNEP's application in accordance with Title 17 California Code of Regulations Section 7004 based on the foregoing.

Sincerely,



Yolanda M. Summerhill
Costa Mesa City Attorney's Office

Cc: Thomas Hatch, City Manager