

PUBLIC HEARING

SUBJECT: AMENDMENT TO CHAPTER 13 OF THE PORTERVILLE MUNICIPAL CODE BY ADDING A HOME-GENERATED SHARPS DISPOSAL PROGRAM

SOURCE: Public Works Department - Field Services Division

COMMENT: The State of California has banned the disposal of used medical syringes (sharps) in landfills, and by extension, into solid waste collection containers. Medical facilities such as doctor's offices and hospitals properly dispose of their sharps through contract services. In Tulare County, there are very few options for disposal of home-use sharps.

The County of Tulare had a grant-funded sharps disposal program until 2011 that provided red disposal containers to home users and took back the filled containers for proper disposal. That program ended with the grant funding.

With the closure of the County program, the only option available to home users of sharps is to purchase prepaid disposal containers at drug stores, fill them up and mail them back for proper disposal. Due to the cost, approximately \$30, there is a very low participation rate in Tulare County.

The Joint Powers Authority (JPA) in San Luis Obispo County adopted a county-wide ordinance requiring drug stores to operate take-back programs for sharps at no cost to the customer. On July 17, 2012, Porterville's City Council recommended the Consolidated Waste Management Authority (CWMA) draft a model ordinance for adoption by the members of the CWMA. The aforementioned ordinance is attached and has been adopted by the cities of Tulare, Dinuba, Lindsay and Visalia.

There are currently over 100 California companies in business to properly collect and dispose of sharps. The cost runs from \$75-\$200 per pickup, and the County Environmental Health Department allows accumulation of sharps for up to 90 days between pickups for disposal. The chain pharmacies currently contract for sharps disposal to handle store-generated sharps.

The intent of the ordinance is to provide disposal options for home-generated sharps at no cost to the customer. There are currently 15 businesses that would be affected by this ordinance. The CWMA will provide a collection kiosk to any store requesting one, at no charge. To launch the program, the CWMA is sponsoring four free drop-off events

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throughout Tulare County to collect accumulated sharps from residents.  
The event in Porterville is set for July 19, 2014.

RECOMMENDATION: That City Council:

1. Approve the proposed Ordinance Amendment;
2. Give first reading to the Ordinance Amending Chapter 13, Section 13-23, in the City Code; and
3. Waive further reading and order the ordinance to print.

ATTACHMENT: Draft Ordinance

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF PORTERVILLE AMENDING  
CHAPTER 13 OF THE PORTERVILLE MUNICIPAL CODE BY ADDING SECTION 13-23  
ESTABLISHING A HOME-GENERATED SHARPS WASTE MANAGEMENT PROGRAM**

**THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES ORDAIN AS FOLLOWS:**

**SECTION 1:** The following sections of the Municipal Code of the City of Porterville is amended to include the following:

**PURPOSES:**

A. Chapter 13 of the Municipal Code of the City of Porterville is amended to include the following:

The City of Porterville finds and declares all of the following purposes for this Ordinance:

- a) To achieve the mandates imposed by the Integrated Waste Management Act of 1989 (AB 939) on a regional basis;
- b) To enact a comprehensive and innovative system for the proper and legal management of home-generated sharps waste, as defined in the Definitions Title, Section (f) of this ordinance, in the City of Porterville in accordance with Section 118286 of the California Health and Safety Code;
- c) To enact a law that establishes a program that is convenient for consumers and the public to return and ensure the safe and environmentally sound disposal of home-generated sharps waste, and to provide a "no-cost" system for consumers for the return of home-generated sharps waste;
- d) To assure that the costs associated with the handling and disposal of home-generated sharps waste are the responsibility of the producers and retailers of home-generated sharps waste, and not local governments or their service providers, state or local government, or taxpayers;
- e) To reduce the likelihood of the illegal disposal of home-generated sharps waste;
- f) To ensure that all costs associated with the proper management of home-generated sharps waste are internalized by the producers and retailers of home-generated sharps waste at or before the point of purchase, and not at the point of discard;
- g) To assure that manufacturers and retailers of sharps, while working to achieve the goals and objectives of this Ordinance, shall have the flexibility to partner with each other, with governmental programs, and with private and nonprofit business enterprises that provide collection and processing services, to develop and promote a safe and effective home-generated sharps waste management system; and
- h) To provide for the safe and convenient collection and disposal of 100 percent of the home-generated sharps waste discarded in the City of Porterville at no cost to the

consumer and to comply with the requirements pursuant to State Health and Safety Code prohibiting the disposal of home-generated sharps waste in trash, recycling, yard waste, or landfills as of August 1, 2014.

## **DEFINITIONS**

- a) "Consumer" means an individual who has purchased sharps for personal use for humans or animals.
- b) "Home-generated" means all sharps as defined in (f) below derived from a household, including a multi-family residence, or a single family residence.
- c) "Porterville area" means the geographic area that includes the boundaries of the City of Porterville, California.
- d) "Retailer" means any entity, including but not limited to, a person or business, or whatever form of organization, which sells sharps to a consumer, including a manufacturer of sharps who sells directly to a consumer.
- e) "Distributor" means a person who sells sharps to a retailer.
- f) "Sharps" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications, to humans or animals.
- g) "Contained" means all home-generated sharps (as defined in (f) above) waste is properly secured in a receptacle (as defined in (h) below) prior to delivery to a retailer for disposal.
- h) "Receptacle" means an FDA approved, rigid and puncture-resistant container with a sealable lid that is designed specifically for transporting sharps for disposal.
- i) "Proper disposal" of home-generated sharps waste means disposal in compliance with the applicable provisions of the California Health and Safety Code by means of an approved/certified medical waste disposal company.

## **SHARPS MANAGEMENT**

- a) By August 1, 2014, every retailer of sharps sold in the City of Porterville shall establish, within the retail outlet, a system for the acceptance and collection of home-generated sharps waste for proper disposal.
- b) Each system established by a retailer for the acceptance and collection of home-generated sharps waste that is enclosed in sealed, puncture resistant receptacles during the retailer's normal hours of operation, for proper disposal shall, at a minimum, include all of the following elements:
  - 1) A convenient location within the retail establishment for the "take-back" from the consumer of home-generated sharps waste at no cost to that consumer.
  - 2) Appropriate signage, prominently displayed within five (5) feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail establishment accepts and collects contained home-generated sharps waste from consumers.
  - 3) An appropriately secured receptacle or receptacles for the collection of contained home-generated sharps waste within the retail establishment. The retailer shall

assure that all home-generated sharps waste is properly contained in a sharps receptacle and placed in secured drop-off location.

- 4) Assurance that the collected home-generated sharps wastes are disposed within the time period established by applicable state law, as determined, from time to time by the Tulare County Environmental Health Service Department, acting as the Local Enforcement Agency.
  - 5) Comply with all applicable provisions of the California Medical Waste Management Act, Health and Safety Code Sections 117600 et seq.
- c) A retailer who is required to accept contained home-generated sharps waste shall, at a minimum, provide the following take back services:
- 1) The take-back from the consumer of contained home-generated sharps waste that the retailer sold or previously sold to the consumer, at no cost to that consumer. In that event, the retailer may require proof of purchase of the prior sales. The retailer shall only be required to accept contained home-generated sharps waste in an amount not to exceed the amount previously sold to the consumer.
  - 2) The take-back of contained home-generated sharps waste from a consumer purchasing sharps from the retailer, at no cost to the consumer. In that event, the retailer shall only be required to accept contained home-generated sharps waste in an amount not to exceed the amount being purchased.
  - 3) The take-back from the consumer of contained home-generated sharps waste that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept contained home-generated sharps waste in an amount not to exceed the equivalent of one 2-quart size sharps container per week, per consumer, from any consumer who resides in the City of Porterville area.

## **ENFORCEMENT**

- a) The City of Porterville may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the County of Tulare to compel and enforce the provisions herein against any retailer within the City of Porterville who sells sharps in violation of this Ordinance. In addition to any relief available to enforce this ordinance, City of Porterville shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.
- b) For any violation of this Ordinance, the City of Porterville may sue to recover civil penalties in the amount of five hundred dollars (\$500.00) per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the City of Porterville, shall constitute a separate offense.
- c) In addition to the civil relief available to the City of Porterville as set forth above, any violation of this City of Porterville Ordinance shall also constitute a criminal offense punishable under the laws of the State of California. The District Attorney, the County

Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions and shall have the authority to determine whether to prosecute the matter as a misdemeanor, or to elect for good cause to reduce the charge to an infraction. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

- 1) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than five hundred dollars (\$500.00), or by both. Each day such violation continues shall be considered a separate offense.
  - 2) Penalty for an Infraction. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by a fine of not more than two hundred fifty dollars (\$250.00). Each day such violation continues shall be considered a separate offense.
- d) To the extent that City of Porterville has adopted a code enforcement ordinance applicable to its jurisdiction, this Ordinance shall be enforceable under said ordinance as land-use- or code-enforcement violations consistent with said ordinance.

#### **SEVERANCE CLAUSE**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Porterville hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

#### **EFFECT OF HEADINGS IN ORDINANCE**

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

**SECTION 2:** This ordinance shall be in full force and effect thirty (30) days from and after its passage, adoption and approval.