

Judge Heithecker – Law & Motion – Wednesday, October 15, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-2. 24CV03294 Northern Valley Harm Reduction Coalition v. City of Chico et al.

EVENT: (1) Plaintiff's Motion for Preliminary Injunction (Second Motion)

(2) Case Management Conference

Plaintiff's Motion for Preliminary Injunction (Second Motion) is GRANTED in PART.

Preliminarily, the Court declines ruling on the evidentiary objections submitted by both parties as they are not material to the issues presented.

The question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554)

The likelihood of success on the merits and the balance-of-harm analysis are ordinarily "interrelated" factors in the decision whether to issue a preliminary injunction. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 446-447) The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463)

Business and Professions Code Section 4145.5

The motion is denied with respect to Business and Professions Code Section 4145.5.

Likelihood of Success

Petitioner Northern Valley Harm Reduction Coalition lacks standing to challenge the City's ordinance based on Business and Professions Code Section 4145.5. The Court agrees with the City's reading of the statute: the statute only authorizes individual physicians and pharmacies to distribute needles and syringes – it does not authorize a "physician lead organization" such as Petitioner to distribute the same. The statute does not authorize a physician to delegate or even supervise the distribution of needles; it simply authorizes a physician to distribute the same.

The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical. (*Zubarau v. City of Palmdale* (2011) 192 Cal.App. 289, 300) Dr. Logan individually as a licensed physician may have a beneficial interest under section 4145.5, but he is not a party to this action. Although Dr. Logan states that he personally counsels and assess each participant, that does not transform Petitioner into a "pharmacist or a physician" as prescribed in section 4145.5. Simply put, Petitioner does not fall into the category of those authorized under section 4145.5 to distribute

needles or syringes. As a result, Petitioner has no beneficial interest that is concrete and actual. Consequently, Petitioner is unlikely to succeed with respect to its Business and Professions Code Section 4145.5 contentions.

Balance of Harms

Because it is not likely Petitioner can demonstrate a beneficial interest with respect to section 4145.5, any harm would be minimal, especially in light of the fact Petitioner is now an authorized SEP.

SEP Act

Likelihood of Success

Preliminarily, Petitioner has acknowledged that some of the Municipal Code Sections it challenges as preempted do not concern Petitioner; rather they relate to the conduct of the participants. The Court agrees. However, as discussed, Petitioner must have a beneficial interest that is concrete and actual in order to have standing. It necessarily follows that with respect to ordinances which regulate participant conduct and do not regulate SEP's, Petitioner lacks standing.

Thus, the Court finds Petitioner lacks standing to challenge the following Municipal Code Sections: 9.29.040(C), 9.29.050(A), 9.29.050(C), 9.29.050(D).

The Court takes judicial notice of the SEP authorization letter dated September 23, 2025 which authorizes Petitioner as a SEP. Because Petitioner is now an authorized SEP, Petitioner has standing to challenge any law which is potentially preempted by the SEP Act.

There are several Municipal Code Sections which attempt to regulate SEP's. The Court addresses each one below to determine whether it is preempted by the SEP Act.

Chico Municipal Code section 9.29.040(A)

Petitioner contends the provisions contradicts B & P § 4145.5 and is therefore preempted. However, because we have determined Petitioner has no standing to challenge B & P 4145.5, it follows Petitioner lacks standing to challenge 9.29.040 on that basis. Consequently, Petitioner is unlikely to succeed on its argument that 9.29.040(A) is preempted.

Chico Municipal Code section 9.29.040(D)

Under article XI, section 7 of the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893,

897) A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. (*Id*)

Petitioner has conceded the SEP Act does not fully occupy the area of law either expressly or through implication. With respect to this code section, Petitioner states it is in conflict or at least duplicative of 17 CCR 7012. The Court finds the code section is neither duplicative or in conflict with 17 CCR 7012.

Local legislation is "contradictory" to general law when it is inimical thereto. (*Sherwin Williams, supra*, at p. 898) The CCR makes no specific reference to sharps containers. The CCR simply provides an objective (maximize return of used syringes) but does not dictate how that objective is to be achieved. Petitioner has not provided any details as to why these rules are inimical. On the surface, the Court fails to see how providing sharps containers is incompatible with objectives of 17 CCR 7012. There is a strong likelihood section 9.29.040(D) is not preempted.

Chico Municipal Code section 9.29.040(E)

Unlike section 9.29.040(D), the Court finds section 9.29.040(E) is inimical with the SEP Act and 17 CCR 7012 which requires a syringe dispensing plant that "Is designed to provide new, sterile syringes to meet the needs of participants ..." (17 CCR 7012(a)(1)) [Emphasis Added] Further, it is inimical to Health & Safety Code Section 121349.1 which provides in pertinent part:

...

Staff and volunteers participating in an exchange project authorized by the state, county, city, or city and county pursuant to this chapter shall not be subject to criminal prosecution for violation of any law related to the possession, **furnishing**, or transfer of hypodermic needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability during participation in an exchange project.

[Emphasis Added]

Section 9.29.040(E) attempts to restrict the access to needles, which is inimical to the broad objective of meeting the needs of participants. Additionally, section 9.29.040(E) attempts to impose liability for furnishing syringes in direct contradiction to Health & Safety Code Section 121349.1 There is a strong likelihood section 9.29.040(E) is preempted.

Chico Municipal Code section 9.29.050(B)

The Court agrees with Petitioner – 9.29.050(B) is duplicative as it simply restates state law. Thus, it is likely preempted.

Balance of Harms

Chico Municipal Code sections 9.29.040(C), 9.29.050(A), 9.29.050(C), 9.29.050(D)

As noted, it is unlikely Petitioner has standing to challenge these laws. Consequently, because these laws are not directed at Petitioner's conduct, any potential harm to Petitioner appears to be minimal. As a result, the motion is denied with respect to these code sections.

Chico Municipal Code section 9.29.040(A)

For similar reasons, and because Petitioner is now an authorized SEP, any potential harm with respect to Business and Professions Code 4145.5 possibly preempting 9.29.040(A) is minimal. Consequentially, the motion is denied with respect to 9.29.040(A)

Chico Municipal Code section 9.29.040(D)

The Court fails to see how the provision of sharps containers is a substantial burden on Petitioner. In any event, the moving papers do not explain why or how that would be a substantial burden. Thus, in considering both the likelihood of success and the balance of harms, the motion is denied.

Chico Municipal Code section 9.29.040(E)

Here, the potential harm is depriving participants access to needles, as well as potential liability. As discussed, this seems to go to the very core of the SEP Act. Consequentially, the potential harm is elevated. Thus, in considering both the likelihood of success and the balance of harms, the motion is granted.

Chico Municipal Code section 9.29.050(B)

Because this is duplicative of state law, there is no harm. The motion is denied.

Petitioner shall prepare and submit a form of order consistent with this ruling within 2 weeks.