
Coates' Canons Blog: Syringe Exchange Programs and Land Use Zoning

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North Carolina communities face the ongoing and complex challenge of the opioid epidemic. One tool for addressing the public health harms related to opioid use is the implementation of syringe exchange programs. Legalized in North Carolina in 2016, syringe exchange programs provide sterile syringes and supplies, safe syringe disposal, and the overdose-reversal drug naloxone, as well as connect individuals to treatment. Because they are relatively new to many communities, questions have arisen. What are syringe exchange programs? And how do they relate to the local zoning ordinance?

This blog outlines the basics. First, the blog provides an overview of how syringe exchange programs operate and the public health considerations for implementing them. Next, the blog provides an introduction to land use zoning and considers how local zoning might (or might not) apply to a syringe exchange program.

Opioids in North Carolina

Thirty-two North Carolinians every week—that is the number of individuals who died from an unintentional opioid overdose in 2017 (1,683 deaths for the year). There were 5,844 visits to hospital emergency departments for opioid overdoses. While there have been some improvements in the over-supply of prescribed opioids, there were still 522 million opioid pills dispensed to North Carolina residents in 2017. Deaths from heroin and synthetic narcotics such as fentanyl have risen dramatically. These staggering statistics are outlined on the Data Dashboard of the North Carolina Opioid Action Plan.

The impacts ripple far beyond the individuals. They are felt by families, communities, businesses, and beyond. In local governments, public health officials see increased levels of substance use and communicable disease, law enforcement and emergency personnel are responding to more and more overdose and opioid-related calls, courts and jails are overburdened with opioid-related cases, and foster care and social services are facing spikes in demand.

For a complex problem like the opioid epidemic there is no simple answer. Communities must bring a collaborative and sustained effort to implement multiple strategies, as outlined in the NC Opioid Action Plan. One strategy identified in the plan is implementation of syringe exchange programs.

Syringe Exchange Basics

What is a syringe exchange program?

A syringe exchange is a program that provides sterile needles and syringes as well as safe disposal of needles and syringes. Syringe exchange programs commonly provide additional services such as referrals for treatment, testing for blood-borne diseases, training for overdose prevention, and other services. As outlined below North Carolina law requires syringe exchange programs to offer a core set of services. Most syringe exchange programs are small. Many operate in conjunction with another organization such as a local government, nonprofit, church, medical clinic, or other entity seeking to reduce health risks associated with drug use. Syringe exchange programs (SEPs) are also referred to as syringe services programs (SSPs), needle exchange programs (NEPs), and needle-syringe programs (NSPs).

Syringe exchange programs operate under the principles of harm reduction, a set of practical strategies aimed at reducing

the negative consequences of drug use. These strategies range from safer use to managed use to abstinence. Individuals who inject drugs are often cut off from traditional health care, so syringe exchange programs serve as an important point of contact for health care and treatment—connecting individuals to treatment, social services, overdose prevention, and other health information. Research has shown syringe exchange programs to be an effective way of addressing many public health concerns related to injection drug use, including reducing the spread of blood-borne diseases, increasing participation in treatment programs, and reducing the chance of needle stick injuries to emergency personnel, sanitation workers, and the public. Syringe exchange programs are associated with significant savings of public money by avoiding some long-term treatment of blood-borne diseases such as HIV and conditions such as sepsis and endocarditis. Syringe exchanges are highlighted in the Centers for Disease Control's 2018 publication, *Evidence-Based Strategies for Preventing Opioid Overdose: What's Working in the United States*.

Much more information about syringe exchange programs is available on the website for the North Carolina Safer Syringe Initiative, including information for law enforcement, resources for providers, and a list of active syringe exchange programs in North Carolina.

Are syringe exchanges legal in North Carolina?

Yes. In 2016 the North Carolina General Assembly passed a law making syringe exchange programs legal (N.C.G.S 90-113.27) subject to specific operational and registration requirements. Syringe exchange programs in North Carolina must provide all of the following:

- sterile syringes and new injection supplies at no cost and in sufficient quantities to prevent sharing or reusing
- safe syringe disposal (secure biohazard disposal, including the distribution and disposal of sharps containers for collecting used syringes)
- security for the site, personnel, and equipment, including providing to local law enforcement an annual written plan
- information about prevention of disease transmission, overdose, and substance use disorder
- information about and referrals for treatment options, including medication-assisted therapy
- naloxone (an overdose-reversal drug) and training on its use, or referrals for the same
- consultations or referrals to mental health or substance use disorder treatment

Before an organization may begin a syringe exchange, the organization must register with the North Carolina Division of Public Health. Additional details about the requirements and registration are available from the Division's website.

The law permitting syringe exchange programs provides limited immunity from criminal prosecution. Under the law, no employee, volunteer, or participant of a syringe exchange program will be charged for possession of syringes, injection supplies, or residual amounts of a controlled substance if the syringes or supplies were obtained from or returned to a syringe exchange program. An individual must have documentation of participation (a participant card or other written confirmation from the syringe exchange program) to claim the immunity.

According to the 2016-17 Annual Reporting Summary from the North Carolina Division of Public Health, in the first year of legalization 21 active syringe exchange programs served nearly 4,000 individuals, made nearly 4,000 referrals to treatment for substance use and/or mental health services, distributed over one million syringes and collected nearly half a million, distributed over 5,000 naloxone kits, and administered over 3,000 tests for HIV or Hepatitis C. As of October 2018, the number of syringe exchange programs in North Carolina was up to 29 programs serving 35 counties, according to the North Carolina Division of Public Health.

How does a syringe exchange operate?

Syringe exchange programs do not require large spaces to operate. They merely require enough storage space for a collection of sterile syringes, a safe syringe disposal box, and the other required materials. An exchange could be operated out of a cabinet in a clinic, the trunk of a car, or some other small or mobile space. Administrative capacity of syringe exchange programs varies greatly. Many syringe exchange programs are run primarily by volunteers or with limited staff.

Given the stigma around drug use and drug users, syringe exchange programs must be flexible in order to be effective. There are several models for how syringe exchange programs operate:

- Fixed site/integrated: An exchange run from a permanent, fixed location. Fixed site exchanges are typically part of an existing agency/program, such as a health department, church, or drug treatment program.
- Mobile: An exchange run from a vehicle.
- Peer-based: An exchange run through peer networks distributing syringes in the community.

Many fixed site exchanges only operate for limited amounts of time (Tuesday and Thursday, 11am – 3pm, for example). Mobile and peer-based exchanges are commonly coordinated by call or text message.

What about the secondary impacts?

While there are many public health and safety reasons to introduce syringe exchange programs, communities commonly have concerns about the secondary impacts of a syringe exchange: Will this increase drug use? Will this increase needle litter in public places? Will this increase crime? As noted below, neighbors in Asheville and Winston-Salem voiced concerns about safety and the appropriateness of syringe exchange programs in particular locations. In downtown Charleston, West Virginia, the county health department opened a syringe exchange program for two years before it was closed in the face of strict operational limits imposed by the city. According to a news report, the program had a large number of participants and was in close proximity to the city's new civic center.

There is research addressing specific concerns about syringe exchange programs. Studies find that syringe exchange programs serve as a bridge to treatment for substance use disorder and not a bridge to increased drug use. With regard to needle litter, one study compared two cities, one with syringe exchange programs and one without, and found significantly more improperly disposed syringes in the city without a syringe exchange program. Another study compared needle litter before and after the opening of a syringe exchange program and found no increase. Additionally, one study found no significant difference in crime between two similar neighborhoods, one with a syringe exchange program and one without.

Of course, community opposition may be rooted in generalized fears, stigma against drug users, and a desire exclude certain uses and individuals from a neighborhood. Beyond the public health studies and public savings associated with syringe exchange programs, in some cases successful implementation of these programs will require public dialogue and education.

Land Use Zoning Basics

As the number of syringe exchange programs in North Carolina has increased, so have the questions about whether and how local zoning regulations apply. As reported in the Winston Salem Journal, the City of Winston-Salem considered regulating syringe exchange programs through zoning after a church opened a program, but the city decided against amending the ordinance. The City of Asheville issued zoning violations against syringe exchange programs integrated into other community support organizations, as reported in the Asheville Citizen Times.

So, does local zoning apply to syringe exchange programs? It depends. Determining whether and how local zoning applies to a syringe exchange program, one must consider the details of the zoning ordinance, the nature of the syringe exchange, and when applicable, the nature of the principal land use on the property.

To be clear, it is not necessary for every possible land use to be specifically listed and regulated in the zoning ordinance. Many accessory uses and temporary uses are allowed without specific rules or specialized permitting. Communities can and do handle syringe exchange programs that way.

What is zoning?

Land use zoning regulations establish rules for the use of property in the city or county. A zoning ordinance includes a map dividing the jurisdiction into different zoning districts and outlining specific rules for each district. Zoning regulations

commonly address topics such as where certain activities may occur; the size and design of new developments; and parking, landscaping, and related site requirements. The rules for a residential zoning district are different from the rules for a commercial zoning district, and those, in turn, are different from the rules for an industrial zoning district.

What types of land uses are regulated and how?

Zoning ordinances typically address different categories of land uses, including principal uses, accessory uses, and temporary uses. Mobile activities generally are not regulated as land uses, but occasionally there are rules for specific mobile activities. To learn more about considerations for different types of land uses see my blog, "Is it a land use yet?"

A key distinction is between principal land uses and accessory land uses. *Principal uses* are uses such as single-family residence, restaurant, church, medical clinic, or factory. The use chart of the zoning ordinance lists many principal uses and identifies where those uses are permitted. Principal uses may be permitted by right in a zoning district (requiring only a basic zoning permit and/or site plan approval), permitted as a special use in a zoning district (requiring a special use permit from a decision-making board), or prohibited in the zoning district. So, consider a new apartment building. It might be permitted by right in the high-density residential zoning district, allowed by special use permit in the medium-density residential zoning district, and prohibited in the single-family residential zoning district.

Some uses are not specifically listed. Typically the zoning ordinance will provide interpretive guidance for how an unlisted use should be handled. A common provision is that the zoning administrator shall treat the unlisted use as the most-closely similar use that is listed. North Carolina courts have indicated a preference for allowing unlisted uses as the most similar listed use rather than imposing a blanket ban on unlisted uses, as outlined in this blog from my colleague David Owens.

Accessory uses are those uses that are secondary to the principal use and commonly allowed along with the principal use. The City of Raleigh Unified Development Ordinance, for example, has a typical definition of "Accessory Structure or Use": "Any structure or use subordinate in both purpose and size that is incidental to and customarily associated with any principal structure or principal use that is located on the same lot." An ordinance may establish operational standards and permitting requirements for certain accessory uses, but other accessory uses are allowed without additional permitting under the broader umbrella of the permitted principal use. Determinations about accessory uses typically are made by planning staff. No public hearing is required.

What is the line between accessory use and principal use? It depends on the nature and extent of the use. Consider a contemporary grocery store. In addition to meat, produce, and packaged foods, many grocery stores today also have some or all of the following: a movie vending machine (like RedBox), coin conversion vending machine, propane tank sales, and coffee shop. Under most ordinances those activities are not separate land uses; there is no need to rezone for video sales, banking, fuel sales, or restaurant. These secondary uses are incidental in scale and impact to the principal grocery store use. But, if a grocery store decided to add a gas station in the parking lot, the grocery store may need additional zoning approval. The scale and impact of a gas station may not fall under the umbrella of the grocery store land use.

Because of the common definition of accessory use there are some critical factors for determining if an accessory use is allowed: Is it subordinate to the principal use? And is it incidental to and customarily associated with the principal use? My colleague Rich Ducker wrote more about accessory uses and structures in this blog.

Two other categories are temporary uses and mobile uses. As the name implies, *temporary uses* are land uses with less permanence than other land uses. Carnivals, construction site office trailers, and Christmas tree sales are examples of temporary land uses. A zoning ordinance may require a permit for a temporary use and limit where they are allowed.

Mobile activities are not typically regulated by zoning ordinances. Pizza delivery, parcel delivery, and ride-sharing are not typically subject to land use regulations. In some cases, though, a mobile activity transitions to a temporary land use. For example, when a food truck sets up and operates in a parking lot it may be subject to zoning.

How does a zoning ordinance relate to a syringe exchange program?

The answer depends on how the exchange operates and on the provisions of the zoning ordinance.

In many cases a syringe exchange program may be allowed under the existing zoning ordinance as an accessory use or as a similar principal use. Winston-Salem opted not to amend the city's zoning ordinance, but to handle syringe exchange programs under existing rules.

Changes to an ordinance can provide clarity for where syringe exchanges are permitted and operational standards, but such ordinance amendments may also raise community opposition. If a syringe exchange program must seek a rezoning or special use permit, the public discussions and political decisions could be driven by fears and stigma rather than broader public policy considerations. There is a long history of communities using zoning to exclude community services, and if a syringe exchange program must go through a public hearing for approval that could effectively prohibit the program. As noted above, however, accessory uses usually are reviewed by planning staff and no public hearing is required.

Most fixed site exchanges are integrated within a separate principal land use. In those situations the syringe exchange may be permitted as an accessory use (either as a specifically listed accessory use or under the general allowance for accessory uses). The answer will turn on whether a syringe exchange program fits under the applicable rules for accessory uses in that jurisdiction and the nature of the principal use. A syringe exchange program may be accessory to a treatment facility or public health office—places that handle regular traffic and an array of medical services. A syringe exchange program may be accessory to a church in the same way that a soup kitchen or substance use support group might be accessory to a church. Depending on the ordinance, however, a syringe exchange might not qualify as a customarily accessory to a single-family residential home.

For a fixed site exchange that operates as a stand-alone land use, the ordinance could identify the use as a distinct land use and limit that use to certain zoning districts. If syringe exchange is not listed in the ordinance as a land use, then it likely will be treated as the most-closely analogous land use that is listed. That determination is a matter of interpretation and will depend on the ordinance and the exact nature of the syringe exchange program.

Mobile and peer-to-peer syringe exchanges are unlikely to trigger zoning rules unless the syringe exchange is set up at a particular location to operate for an extended period of time or at regular intervals. In that case the use might be handled as a temporary land use.

As a reminder, each zoning ordinance is unique, so you must consult the applicable zoning ordinance for specific definitions and standards.

Conclusion

Implementing syringe exchange programs is one proven tool for reducing certain harms from the opioid epidemic. Syringe exchange programs were legalized in North Carolina in 2016 and have been implemented in many communities across the state. As new exchanges have opened, questions have arisen about if and how land use zoning regulations apply. As outlined above, the extent to which land use zoning applies to a syringe exchange program will depend upon the details of the ordinance and how the syringe exchange operates.

If you or a loved one need help for addiction, resources are available. Call 911 in the case of a medical emergency.

Links

- injuryfreenc.shinyapps.io/OpioidActionPlan/
- www.ncdhhs.gov/about/department-initiatives/opioid-epidemic
- www.nytimes.com/2016/09/05/upshot/politics-are-tricky-but-science-is-clear-needle-exchanges-work.html
- www.cdc.gov/hiv/pdf/risk/cdchiv-fs-syringe-services.pdf
- www.cdc.gov/policy/hst/hi5/cleansyringes/index.html



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- stacks.cdc.gov/view/cdc/59393
 - www.ncdhhs.gov/divisions/public-health/north-carolina-safer-syringe-initiative
 - www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_90/GS_90-113.27.pdf
 - www.injuryfreenc.ncdhhs.gov/DataSurveillance/NCSSI-2016-17-AnnualReportingSummary-SaferSyringeInitiative-v2.pdf
 - www.nytimes.com/interactive/2018/04/27/upshot/charleston-opioid-crisis-needle-exchange.html
 - www.ncbi.nlm.nih.gov/pubmed/10609594
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 - www.ncdhhs.gov/treatment