

Via Electronic Mail to safemeds@sfgov.org

July 13, 2020

San Francisco Department of the Environment
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Re: Public Comments on Inmar Intelligence's May 22, 2020 Proposed Safe Drug Disposal Stewardship Plan

SF Environment:

MED-Project LLC ("MED-Project") appreciates the opportunity to submit these public comments on the proposed Safe Drug Disposal Stewardship Plan, dated May 22, 2020, submitted to the San Francisco Department of the Environment ("SFE" or the "Department") by Inmar Intelligence (the "Proposed Plan").

MED-Project develops, implements, and operates stewardship programs for unwanted medicine from households on behalf of 250 "Producers" (as defined in San Francisco Safe Drug Disposal Stewardship Ordinance ("Ordinance") § 2202). MED-Project has substantial, practical, on-the-ground experience implementing unwanted household medicine take-back programs in 21 jurisdictions across the country, including throughout California. MED-Project currently administers the only approved Product Stewardship Plan for Unwanted Medicine from Households in the City and County of San Francisco ("San Francisco"). Based on MED-Project's experience developing and implementing unwanted medicine stewardship programs, including its experience in San Francisco since 2016, MED-Project submits the following comments for SFE's consideration.

I. SFE must apply the same approval standards to all Plan Operators.

A. Every Stewardship Plan must independently satisfy Ordinance convenience standards.

The Ordinance requires that each "Stewardship Plan" (as defined in Ordinance § 2202) contain a description of how the proposed collection system under the Stewardship Plan will provide "convenient ongoing collection service for all Unwanted Covered Drugs from City residents in compliance with the provisions and requirements in Section 2205." Ordinance § 2204(b). The convenience standards specified in the Ordinance at Section 2205(b), in turn, require that each Stewardship Plan's collection system provide "reasonably convenient and equitable access for all City residents in all Supervisorial Districts" by requiring, namely, that: 1) there are at least five (5) drop-off sites in each of San Francisco's 11 Supervisorial Districts; and 2) if the

aforementioned convenience metric cannot be achieved in each Supervisorial District, then those underserved areas must be alternatively served through periodic collection events and/or mail-back services. Ordinance § 2205(b)(1). Additionally, the Stewardship Plan must include: 1) a list of all participating Collectors; 2) a list of all drop-off sites; 3) a description of how any periodic collection events will be scheduled and located; and 4) a description of how any mail-back services will be provided. Ordinance § 2204(b). These core components of a Stewardship Plan are mandatory under the Ordinance and must apply equally to all “Plan Operators” (as defined in SFE Regulation 16-01-SDDSO (the “Regulation”)).

The Proposed Plan makes various statements regarding its intentions of meeting the Ordinance’s mandatory “convenient and equitable access” requirement but does not describe how the specific requirements enumerated above will be satisfied. For instance, the Proposed Plan states that “Inmar is confident in our ability to meet the convenience standard provided in §2205(b)(1)” and “[p]ursuant to §2205(b)(1), Inmar will establish a minimum of five drop-off sites in every Supervisorial District, geographically distributed to provide reasonably convenient and equitable access.” See Proposed Plan § IV(a). It is difficult to evaluate the sufficiency of the list of proposed drop-off sites provided in Appendix A of the Proposed Plan, given that there appear to be duplicate locations in the list with different statuses, as well as others that are not currently in business and do not have an active California Board of Pharmacy license. However, even if all open and properly licensed sites listed in Appendix A ultimately agreed to participate in the Proposed Plan, the Proposed Plan would still not satisfy the convenience standard’s requirement to provide five (5) drop-off sites in each of San Francisco’s 11 Supervisorial Districts, as there appears to be at least one Supervisorial District without any proposed site (District 4), and multiple Districts with less than five (5) potential sites.

Additionally, the Proposed Plan must describe how convenient and equitable access to the Proposed Plan’s collection system will be provided to San Francisco residents located in underserved areas, including specifically providing *a description of how* the Proposed Plan will serve residents in those areas through periodic collection events and/or mail-back services and a *description of how* any periodic collection events will be scheduled and located. Ordinance §§ 2204(b), 2205(b)(1). The Proposed Plan does not describe how collection events will be scheduled and located. Instead, the Proposed Plan only states, without further details, that “[t]o ensure the best possible access for City residents, Inmar also provides mail-back services in accordance with §2205(b)(5) and collection events.” See Proposed Plan § IV(a). Additionally, the Proposed Plan does not adequately describe how reasonably convenient and equitable access to mail-back services will be provided to City residents located in underserved areas. See Proposed Plan § IV(c).

Lastly, the Proposed Plan does not appear to provide for the collection of *all* “Unwanted Covered Drugs,” (as defined in Ordinance § 2202) as required by the Ordinance and provided for in MED-Project’s approved Stewardship Plan. “Covered Drug” is defined under the Ordinance broadly to include both prescription and nonprescription drugs, as well as inhalers and pre-filled injector products. See Ordinance § 2202. However, the Proposed Plan does not clearly address the collection of inhalers and pre-filled injector products. As is required by the Department, MED-

Project's Stewardship Plan provides mail-back services for inhalers and pre-filled injector products. *See* San Francisco MED-Project Stewardship Plan Notice of Determination ("Notice of Determination"), Item 1 (July 3, 2018).

B. Every Stewardship Plan must independently satisfy Ordinance and Regulation outreach requirements.

The Ordinance and Regulation establish comprehensive Stewardship Plan promotion requirements. *See* Ordinance § 2206; Regulation §§ B-D. Each Plan Operator must independently meet promotion content, reach and frequency, materials distribution, and other promotion requirements for Stewardship Plan approval. *See, e.g.*, Regulation § 1.0 ("*Each Plan Operator shall utilize the following design parameters in meeting the requirements of Section 2206 of the Ordinance.*") (emphasis added). The Department cannot apply these standards differently among Plan Operators.

1. *Promotion content requirements apply independently to all Stewardship Plans.*

To provide San Francisco residents customized messaging regarding safe drug disposal, the Regulation applies promotion content requirements to each Stewardship Plan. Among other things, these requirements include that Stewardship Plans:

- “[S]hall convey disposal instructions only for the types of collection and disposal options offered through *that approved Stewardship Plan.*” Regulation § 1.1 (emphasis added).
- Translate “[a]ll written outreach materials, including bin signage,” into Department-specified languages. Regulation § 1.2.
- Use messages designed and implemented to “[d]escribe where and how to return Unwanted Covered Drugs under *the approved Stewardship Plan.*” Regulation § 1.3.3 (emphasis added).
- Use messages designed and implemented to “[d]iscourage the disposal of Unwanted Covered Drugs in any refuse collection container, including a collection cart, receptacle, bin, or debris box.” Regulation § 1.3.4.

Regardless of the media used, Plan Operators must comply with these requirements to provide promotional content tailored to San Francisco residents. The Regulation requires that messaging promote how to return Unwanted Covered Drugs in San Francisco under the approved Stewardship Plan, not how to do so generally nationwide. Regulation §§ 1.1, 1.3.3. Outreach materials, including “bin signage,” must be translated into the Department-specified languages. Regulation § 1.2. And messaging cannot promote certain disposal options. Regulation § 1.3.4.

Consistent with these requirements, MED-Project provides education and outreach materials customized for San Francisco. MED-Project's materials only promote Department-approved collection options; they do not promote in-home disposal. *See, e.g.*, MED-Project

Stewardship Plan Appendices N, O. As required by the Department, these promotions include dedicated promotions for inhaler and injector mail-back services. *See* MED-Project Stewardship Plan Appendices E, N, O; Notice of Determination Item 2 (June 5, 2019). Its kiosk signage is available in English, Spanish, Chinese, Russian, and Filipino translations. *See* MED-Project Stewardship Plan Appendices E, N, O. Additionally, MED-Project provides a website specific to its Stewardship Plan for San Francisco. *See* Appendix N.

Promotion content requirements the Department applies to MED-Project must apply to all Plan Operators. If Plan Operators can bypass these content requirements by providing generic promotions not specific to San Francisco or through decentralized promotion approaches, then the Department must apply that interpretation of the Ordinance and Regulation equally to all Plan Operators. *See* Proposed Plan Appendices C, D.

2. *Reach and frequency requirements apply independently to all Stewardship Plans.*

To ensure Stewardship Plans are effectively promoted, the Regulation requires that each Plan Operator must, within San Francisco, achieve mandated combined target reach percentages and frequencies at least three times per year. *See* Regulation §§ 1.4 – 1.6. These requirements apply individually to each Stewardship Plan, as Regulation references to specific years of Stewardship Plan operation and reach and frequency reporting requirements applicable to “[e]ach Plan Operator” confirm. *See* Regulation §§ 1.4, 1.5, 2.0, 2.1. The Department deemed reach and frequency so important for assessing promotional activities that the Regulation mandates specific annual reporting requirements for these metrics. *See* Regulation § 2.1 (requiring a discussion of whether and how outreach activities achieved reach and frequency requirements); § 2.3 (requiring target rating points by medium to demonstrate the Plan Operator met reach and frequency requirements). The Regulation does not allow one Plan Operator to rely on another’s efforts to achieve these reach and frequency requirements.

MED-Project’s Stewardship Plan expressly provides that it “expects to achieve the required combined target reach percent of 50% at a 2+ frequency for the duration of one month, at least three times per year” MED-Project Stewardship Plan § XI.D.4. MED-Project’s Stewardship Plan also describes how it will satisfy these requirements through “a combination of digital media campaigns, print ads, and traditional broadcast media.” *Id.* The Department expressly imposed reach and frequency requirements on MED-Project through the Notice of Determination. *See* Notice of Determination Item 13 (June 5, 2019). It also enforces these requirements through detailed reviews of MED-Project annual reports and associated follow-up requests for additional documentation. *See* Letter from SF Environment to MED-Project LLC (Sept. 17, 2019).

The Proposed Plan does not state it will independently achieve mandated combined target reach percentages and frequencies at least three times per year. *See* Regulation §§ 1.4 – 1.6. As the Department imposes reach and frequency and related reporting requirements on MED-Project, it must also do so for other Plan Operators. If other Plan Operators can satisfy these standards through promotions not readily susceptible to San Francisco reach calculations, through alternative metrics, or if they do not need to satisfy these requirements at all, then the Department must allow such flexibility for all Plan Operators. *See* Proposed Plan § V(d).

3. *Materials distribution requirements apply independently to all Stewardship Plans.*

The Department's Notice of Determination requires that "[t]he Producers represented by the MED-Project shall provide a minimum of 50 copies of the tri-fold flyer in Appendix O in English and 25 copies in each other language specified in the Ordinance on an annual basis and upon request" to certain pharmacies, health care facilities, veterinarians, and veterinary clinics. Notice of Determination Item 9 (June 5, 2019). As the Department interprets the Ordinance and Regulation as mandating that MED-Project distribute these materials in these quantities, to ensure a level playing field among Plan Operators, it must apply those requirements to all Plan Operators.

C. Every Stewardship Plan must satisfy all legal requirements and ensure safe, secure and compliant collection and disposal of all Unwanted Covered Drugs.

The Ordinance requires a Stewardship Plan to, among other things, provide a description of the policies and procedures that will be followed by persons handling Unwanted Covered Drugs collected under the Stewardship Plan, including a description of how "all Collectors, transporters and waste disposal facilities used will ensure that the collected Unwanted Covered Drugs are safely and securely tracked from collection through final disposal", as well as "how all entities participating in the Stewardship Plan will operate under and comply with all applicable federal and state laws, rules and guidelines, including but not limited to those of the United States Drug Enforcement Administration, and ... the State of California Board of Pharmacy." Ordinance § 2204(d). In order to ensure that the above requirements are met, the following components must be addressed in the Proposed Plan:

1. *All Stewardship Plans must describe how pharmacies will comply with all recordkeeping requirements imposed by the California Board of Pharmacy.*

The California Board of Pharmacy ("BOP") regulations at 16 C.C.R. § 1776.6 require that pharmacies collecting unwanted prescription drugs maintain detailed records on collection receptacles and inner liners. However, the Proposed Plan does not always align with the BOP regulations, including in how it directs authorized collectors to maintain information for two years. *See Proposed Plan § VII.* The BOP requires that pharmacies maintain these records for three years. 16 C.C.R. § 1776.6 ("Each entity authorized by this article to collect unwanted prescription drugs from consumers shall maintain the records required by this article for three years.").

2. *All Stewardship Plans must provide a description of the emergency and rapid response services.*

As stated above, the Ordinance requires that all Proposed Plans describe the policies and procedures that will be used to ensure that Unwanted Covered Drugs are safely, securely and compliantly collected, transported and disposed of. Ordinance § 2204(d). To this end, all Stewardship Plans must describe the emergency and rapid response services that will be used in the event of an unplanned event or emergency requiring specialized rapid response services, such as a spill incident or other emergency or major event.

- 3. All Stewardship Plans must adequately describe the handling and disposal system that will be utilized.*

The Ordinance requires that all Stewardship Plans describe the handling and disposal system, including waste disposal facilities, that will be used by the Stewardship Plan in accordance with Sections 2205 and Section 2207 of Ordinance, as well as how those facilities, all other entities participating in the Stewardship Plan, will ensure that all Unwanted Covered Drugs collected under the Stewardship Plan are compliantly transported and disposed of in accordance with all applicable laws and regulations. Ordinance §§ 2204(c), (d). The Proposed Plan only identifies one (1) hazardous waste facility where Unwanted Covered Drugs will be sent for destruction: Clean Harbors Aragonite. *See Proposed Plan § VI.* MED-Project's experience suggests that at least one backup disposal facility should be identified in the Stewardship Plan to ensure that all Unwanted Covered Drugs are timely and lawfully transported and disposed of under the Stewardship Plan. Disposal facilities from time-to-time have unplanned shutdowns, thereby necessitating the need to dispose of Unwanted Covered Drugs at a different facility in order to satisfy the strict timelines set under the applicable laws and regulations.

- 4. All Stewardship Plans must contain a complete description of all disposal methods that will be used under the Stewardship Plan.*

Section VI of the Proposed Plan states that “[k]iosk containers will be sent from the authorized Collector directly to Clean Harbors for destruction as Inmar’s approved hazardous waste incinerator.” *See Proposed Plan § VI.* However, Section VI does not describe the disposal methods that will be used for Unwanted Covered Drugs that are collected by means other than by kiosks, including mail-back envelopes or take-back events. The Proposed Plan also does not explain if or how each mail-back package that is sent to the disposal facility will be weighed for purposes of annual reporting. *See Notice of Determination Item 6 (June 5, 2019).*

- 5. Stewardship Plan collection models must comply with all other applicable laws, regulations, and other legal requirements.*

Under the Ordinance, Stewardship Plans must describe how “all entities participating in the Stewardship Plan will operate under and comply with all applicable federal and state laws, rules and guidelines, including but not limited to those of the United States Drug Enforcement Administration” Ordinance § 2204(d). If the Department evaluates one Stewardship Plan for compliance with all applicable laws, regulations, and other legal requirements, it must do so for all Stewardship Plans.

As the Department reviews the Proposed Plan for compliance with all applicable laws, regulations, and other legal requirements, MED-Project notes that Stewardship Plans must comply with United States Department of Transportation (“DOT”) requirements. For example, for Stewardship Plans relying only on DOT Special Permit 20255 for self-service returns at kiosk drop-off sites, MED-Project’s understanding is that the kiosk drop-off sites themselves must become party to Special Permit 20255. *See Proposed Plan Appendix E.*

Additionally, with respect to compliance with the United States Drug Enforcement Administration's ("DEA") regulations, in MED-Project's experience, it has not been able to procure the type of "full-service return" model of collection services from reverse distributors that is described in Section IV(b) of the Proposed Plan. It does not appear that this type of scenario is contemplated under the applicable DEA regulations. *See* 21 C.F.R. §§ 1317.05(c) (collector disposal methods), 1317.15 (reverse distributor acquisition and disposition), 1317.55 (reverse distributors and law enforcement), 1317.60 (inner liner access and sealing), 1317.75(g) (inner liner installation and removal), 1317.95 (transportation and destruction).

D. Every Stewardship Plan must be subject to the same administrative standards.

The Ordinance and Regulation establish administrative standards applying to each Plan Operator, including Producer funding, Department funding, and public access requirements. *See, e.g.*, Ordinance §§ 2208, 2209, 2211, 2215. The Department has also imposed additional reporting requirements on MED-Project. *See* Notice of Determination Items 1 and 7 (June 5, 2019). These requirements must apply equally to all Plan Operators.

1. *Producer funding requirements apply independently to all Stewardship Plans.*

The requirement that Producers fund Stewardship Plans is foundational to the Ordinance. *See, e.g.*, Ordinance § 2202 ("Stewardship Plan" means a plan . . . that is: (1) financed, developed, implemented and participated in by one or more Producers . . ."); Ordinance § 2203(e)(6) ("A Producer, either individually or jointly with other Producers, shall: . . . Pay all administrative and operational costs and fees associated with its Stewardship Plan."); *see also* SF Environment, Second Biennial Report on the San Francisco Safe Drug Disposal Stewardship Ordinance 5 (July 2019) ("The Ordinance is based on an Extended Producer Responsibility (EPR) model in which manufacturers of products that are difficult or expensive to dispose of are responsible for the costs of collection and disposal at the end of their product's useful lives."). The Ordinance defines "Producer" to mean "a Manufacturer engaged in the Manufacture of a Covered Drug sold in the City, including a brand-name or generic Drug," subject to certain exemptions. Ordinance § 2202. It then makes clear that these Producers must pay for virtually all aspects of the Stewardship Plan. Specifically, the Ordinance provides that:

A Producer or group of Producers participating in a Stewardship Plan shall pay *all* administrative and operational costs related to their Stewardship Plan, except as provided under this Section 2208. Administrative and operational costs related to the Stewardship Plan *include but are not limited to* the following: [enumerating cost categories].

Ordinance § 2208(a) (emphasis added).

Stewardship Plans must meet these funding requirements to be approved. Inmar's Stewardship Plan includes only one "Producer(s)." *See* Proposed Plan § III. It is difficult to imagine a single Producer self-funding a Stewardship Plan of the scope and scale that the

Ordinance and Regulations require. That is the obligation, however, that any Producer(s) participating in any Stewardship Plan assumes. Additionally, in light of the Ordinance’s Producer-funding requirements, it appears that the Proposed Plan’s reference to certain “[a]dditional charges” is an oversight. *See* Proposed Plan at PDF page 42 (“Additional charges may apply for non-compliance.”). If the Department interprets the Ordinance such that other organizations, may fund Stewardship Plans, then due process requires that it apply the same interpretation to MED-Project.

2. *Department funding requirements apply independently to each Plan Operator.*

Ordinance § 2215 establishes Stewardship Plan review and annual operating fees. Each Plan Operator must, of course, pay its own plan review fees under Ordinance 2215(a). *See* Ordinance § 2215(a) (“A Producer or group of Producers participating in a Stewardship Plan shall pay to the Director plan review fees to be established . . .”). Likewise, each Plan Operator must also be responsible for an equal share of the Department’s “annual operating fees” (*e.g.*, if the annual operating fee is \$95,000 and there are two approved Stewardship Plans, each Plan Operator would pay \$47,500). Because each Plan Operator has an independent obligation to meet the same collection and disposal, promotion, and administrative requirements, each Plan Operator also has an independent obligation to pay the same annual operating fees.

3. *Public access requirements apply independently to each Stewardship Plan.*

Stewardship Plans are public documents. Ordinance § 2211(g) requires that “[t]he Director shall make all Stewardship Plans and proposed plans submitted under this Section 2211 available to the public.” Despite this plain language and the public interest in Stewardship Plans, Inmar makes the following claim on nearly¹ every page of the Proposed Plan:

© Inmar 2020. Inmar authorizes the posting of the plan dated May 22, 2020 in accordance with Section 2211(b) and 2211(g) of the San Francisco Ordinance 31-15 for Safe Drug Disposal Stewardship for the purposes of making it available to the public for review and comments. Any other use requires express written consent of Inmar.

Proposed Plan *passim*. The Ordinance does not provide that the Director shall make all Stewardship Plans and proposed plans submitted under Section 2211 available to the public, *except as limited* by the Plan Operator. It requires the Director to make Stewardship Plans public, period.

¹ Inmar even further restricts public access to Proposed Plan page 55, which apparently prohibits even public review and comment. Proposed Plan at 55 (“Inmar confidential – do not copy, distribute or use without Inmar written permission, 2020.”).

The Department should not approve a Stewardship Plan attempting to side-step requirements for public access.²

If Inmar can retain the Proposed Plan’s language attempting to limit public access to and use of the Proposed Plan, it will have a chilling effect on public engagement. San Francisco residents may access and use a Stewardship Plan in many ways, including through: school (*e.g.*, lessons about Extended Producer Responsibility (“EPR”) programs); advocacy (*e.g.*, supporting access to collection services); scholarship (*e.g.*, evaluating Stewardship Plan success); etc.³ Upon seeing the Proposed Plan’s language claiming to limit public use, San Francisco residents will not hire an attorney to determine their rights to use the Proposed Plan or portions thereof. Rather, the teacher planning an EPR lesson will find a different example, the advocate will use another citation, and the scholar will gather other data; public engagement will be suppressed.

The Proposed Plan’s self-imposed and unjustified public access restriction also adversely affects the Department and other Plan Operators. With respect to the Department, this attempted restriction has the potential to decrease transparency by frustrating California Public Records Act compliance. It also purports to require Inmar’s written permission for any Department use of the Proposed Plan in a Department report, Department outreach, etc. With respect to other Plan Operators, the claimed restriction inhibits Stewardship Plan coordination under Ordinance § 2206. It also creates an uneven playing field. Consistent with Ordinance § 2211, MED-Project’s Stewardship Plan (and related documentation), including its collection and disposal network, is publicly available on the Department website for anyone to review. *See* SF Environment, Safe Drug Disposal Stewardship Ordinance, <https://sfenvironment.org/safe-drug-disposal-stewardship-ordinance> (last visited July 12, 2020). The public nature of this document and the level of detail it contains affects MED-Project negotiations with potential vendors; Plan Operators able to limit public access to their Stewardship Plan would have a competitive advantage over MED-Project. Additionally, in contrast to the open public review process for MED-Project’s Stewardship Plan, the chilling effect of the Proposed Plan’s unjustified public use restriction may have affected this public comment period and, thus, the Proposed Plan’s approval process.

In short, Stewardship Plans are public documents developed with the Department in a public process. The Department should not approve a Stewardship Plan that attempts to contravene the Ordinance’s public access requirement. Doing so would chill public engagement and create competitive imbalances. Instead, the Department must apply the Ordinance’s public access requirement equally to all Plan Operators and require the Proposed Plan to remove the undue public access limitation.

² It may be in the public interest to withhold certain Stewardship Plan information from public disclosure in limited circumstances consistent with all applicable laws, regulations, and other legal requirements (*e.g.*, information related to controlled substance diversion risks). The Proposed Plan’s claims go far beyond that, however.

³ Although these are likely permissible uses of the Proposed Plan under federal copyright law, under either fair use and/or implied license theories, the Proposed Plan’s attempt to limit public access is so blunt that it extends public use restrictions beyond what copyright protections afford.

4. *Reporting requirements apply independently to all Stewardship Plans.*

The Department, through its Notice of Determination, imposes several reporting requirements on MED-Project that must also extend to other Plan Operators. The Notice of Determination requires MED-Project to report, “[w]ithin 10 business days of the end of each calendar quarter . . . a summary of Help Desk requests by type made in the previous quarter, including the number of each type, average days to close and the range (min/max days) in length of time to close.” Notice of Determination Item 7 (June 5, 2019). It also requires MED-Project to provide a list of all participating Producers, including their contact names and emails, upon request within 10 business days. Notice of Determination Item 1 (June 5, 2019). If the Department interprets the Ordinance and Regulation as requiring this information, then those same requirements apply with equal force to any Plan Operator.

II. Stewardship Plan coordination on the single system of promotion.

The Department first approved MED-Project’s Stewardship Plan on July 25, 2016. Since that time, MED-Project has worked with the Department to implement its Stewardship Plan for San Francisco residents in compliance with the Ordinance, Regulation, and all other applicable laws, regulations, and other legal requirements. Because of its work with the Department and its commitment to compliance, MED-Project now provides 44 kiosk drop-off sites and 73 mail-back distribution locations throughout San Francisco so that disposing of Unwanted Covered Drugs is convenient, safe, and accessible for residents in each Supervisorial District. MED-Project will continue these efforts regardless of whether the Department approves another Stewardship Plan.

Consistent with its commitment to compliance, if the Department approves another Stewardship Plan, MED-Project will coordinate with that Stewardship Plan to develop a single system of promotion as required under Ordinance § 2206 and Regulation § 4. In coordinating with another Stewardship Plan, MED-Project will comply with Regulation § 4, which establishes the process by which Stewardship Plans will coordinate, and will also comply with all other applicable laws, regulations, and legal requirements, including federal and state antitrust requirements.

Because Regulations § 4 makes the “Plan Operators of all Stewardship Plans proposed as of that date” part of the coordination process, Stewardship Plans cannot predetermine coordination outcomes through their own Stewardship Plan approval process. Regulation § 4.1. For example, MED-Project objects to the suggestion that “Inmar will coordinate with other Plan Owners to execute the Digital Media outreach and Social Influencer outreach, while the other plan operator focuses on traditional print and television media.” Proposed Plan § V(a). Given that, in MED-Project’s experience, “traditional print and television media” are among the most expensive promotion methods, the Proposed Plan’s approach appears inequitable.

Furthermore, while MED-Project will, of course, coordinate with other Plan Operators as required under the Ordinance and Regulation, MED-Project does not accept the Proposed Plan’s unusual trade association proposal. For unknown reasons, “Inmar suggests the Program Operators form a trade association to ensure that there are no inefficiencies or distortions due to collaboration. A trade association protects against the types of illegal agreements that can distort competition.”

Proposed Plan § V(a). Despite these claims, establishing a trade association does not somehow bestow competitor organizations with antitrust immunities. *See* Federal Trade Commission, Spotlight on Trade Associations, <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/spotlight-trade> (last visited July 12, 2020) (“But forming a trade association does not shield joint activities from antitrust scrutiny: Dealings among competitors that violate the law would still violate the law even if they were done through a trade association.”). For its part, MED-Project will implement Ordinance § 2206, Regulation § 4, and all other aspects of the Ordinance and Regulation in compliance with all antitrust laws, regulations, and other legal requirements.

Thank you again, in advance, for your consideration of MED-Project’s comments. Please feel free to contact us with any comments or questions, and we look forward to continuing to work with SFE going forward to provide San Francisco residents with safe, convenient and effective services under our approved Stewardship Plan.

Sincerely yours,



Dr. Victoria Travis
National Program Director