

[Police Code - Access to Reproductive Health Care Facilities]

Ordinance amending the Police Code, Article 43, Sections 4301, 4302, 4303, and 4304, to replace the existing eight-foot bubble zone around individuals entering, exiting, and seeking services at health care facilities with a fixed buffer zone around the entrances, exits, and driveways of reproductive health care facilities; and to prohibit any person from entering or remaining in that buffer zone, with certain exceptions; and making environmental findings.

NOTE: Additions are *single underline italics Times New Roman*; deletions are ~~*strike through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated herein by reference.

Section 2. The Police Code is hereby amended by amending the title of Article 43 and Sections 4301, 4302, 4303, and 4304, to read as follows:

ARTICLE 43: ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES

SEC. 4301. FINDINGS

Every person in the City and County of San Francisco (“City”) has a fundamental right to privacy protected not only by the United States Constitution, but also explicitly guaranteed in Article I,

1 Section 1 of the California Constitution. This right to privacy includes the right to access all legal
2 health care services, including reproductive health care services.

3 Maintaining access to reproductive health care services is a matter of critical importance not
4 only to individuals, but also to the health, safety, and welfare of all residents of the City. Efforts to
5 harass, obstruct, or otherwise interfere with individuals seeking reproductive health care services may
6 deter, delay, and even prevent individuals from obtaining necessary reproductive health care services.
7 These efforts, which often include forcing patients to run a gauntlet of demonstrators near the
8 entrances, exits, and driveways of reproductive health care facilities, or to confront intimidating
9 demonstrators stationed at or near those entrances, exits, and driveways, also disrupt the ability of staff
10 at reproductive health care facilities to devote their full efforts to providing health care services and
11 divert valuable facility resources away from patients. Actions that result in such obstruction, delay,
12 and deterrence of patients, and diversion of reproductive health care facilities' staff and resources,
13 undermine the City's interest in maintaining the public health, safety, and welfare, and in preserving its
14 residents' constitutional right to privacy.

15 Standing on equal footing with the right to access health care services, including reproductive
16 health care services, are the free speech and assembly rights of those who would gather and raise their
17 voices on matters of public concern. Under this Article, the Board of Supervisors previously attempted
18 to balance these rights by prohibiting harassment, within 100 feet of an exterior wall of a health care
19 facility, of individuals entering, exiting, or seeking services at a health care facility, with harassment
20 defined as "knowingly approach[ing] another person within eight feet of such person, unless such
21 other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or
22 engaging in oral protest, education, or counseling with such other person." That prohibition has
23 proven ineffective. Due to the density and space constraints of the City's urban landscape, that
24 prohibition has not adequately prevented harassment, delay, and deterrence of patients seeking vital
25 health care services, and in particular reproductive health care services, nor adequately prevented

1 distraction and diversion of health care providers from their core mission of providing services in a
2 safe and supportive environment.

3 The Board of Supervisors hereby finds that the creation of a buffer zone, as defined in Police
4 Code Section 4302 as amended by Ordinance No. _____, and a prohibition on entering or
5 remaining in that buffer zone as specified in Police Code Section 4303 as amended by Ordinance
6 No. _____, with certain exceptions, is necessary to promote the full exercise of the right to privacy
7 by patients seeking vital reproductive health care services and is also necessary to maintain public
8 health, safety, and welfare within the City. The Board of Supervisors further finds that this Article
9 strikes a lawful and appropriate accommodation between the right to privacy and to access
10 reproductive health care services and the needs of public health, safety, and welfare, on the one hand,
11 and the rights of free speech and association, on the other.

12 Article 43, as amended by Ordinance No. _____, applies only to reproductive health care
13 facilities, no health care facilities generally. In addition, Article 43, as amended by Ordinance
14 No. _____, does not apply to licensed hospitals or to reproductive health care facilities owned or
15 operated by licensed hospitals. This scope ensures the Article is narrowly tailored to address the
16 significant governmental interests it serves, and leaves other health care facilities and locations
17 available for speech. Individuals attempting to access reproductive health care facilities to obtain
18 reproductive health care services have been subjected to harassing or intimidating activity from
19 extremely close proximity, tending to hamper, delay or deter their access to those facilities and services
20 and thus subverting their legal rights to seek and obtain legal health care services. The Board finds
21 that reproductive health care facilities that are not part of a licensed hospital, and not owned or
22 operated by a licensed hospital, are more vulnerable to such subversion of their patients' rights on
23 account of the layout and design of their facilities and parking areas as well as their staff resources
24 and deployment. Further, reproductive health care facilities not affiliated with hospitals commonly
25 possess fewer resources for providing adequate security and safety to individuals seeking access to

1 reproductive health care services. Thus, Article 43, as amended by Ordinance No. _____,
2 imposes narrowly tailored, content-neutral restrictions where they are most necessary to further the
3 significant government interests the Article serves.

4 The Board finds that the modest scope of the buffer zone is sufficient to ensure that patients may
5 gain safe and unimpeded access to reproductive health care services, while allowing speakers to
6 effectively communicate their messages to their intended audience.

7 The Board further finds that obstructions and demonstrations around the entrances, exits and
8 driveways of reproductive health care facilities can impede pedestrian and vehicle traffic and create
9 safety hazards on the sidewalks and roadways, and that this buffer zone will help promote safe and
10 effective pedestrian and vehicle traffic flow around reproductive health care facilities. In addition, the
11 buffer zone will reduce disputes and confrontations requiring law enforcement services, and will
12 protect property rights.

13 The Board further finds that harassing and intimidating activities conducted around the
14 entrances, exits and driveways of reproductive health care facilities can adversely affect the physical
15 and emotional health and well-being of patients seeking services at a reproductive health care facility.
16 The Board finds that this buffer zone will provide a protective space for patients and thereby help avoid
17 those adverse health consequences.

18 The Board finds that this Article imposes content-neutral time, place, and manner restrictions
19 on speech and association, which are narrowly tailored to serve significant government interests and
20 leave ample alternative channels of communication.

21 This Article is not intended to create any limited, designated or general public fora. Rather it is
22 intended to protect those who seek access to reproductive health care from conduct that violates their
23 rights.

24 The Board of Supervisors finds that every person in the City and County of San Francisco has a
25 basic and fundamental right to privacy protected by the United States Constitution and explicitly

1 ~~guaranteed in California's Constitution, Article I, Section 1, including the right to seek and obtain all~~
2 ~~health care services permitted under the laws of this State. Central to this right is the need to secure~~
3 ~~access to all reproductive health care services. Access to these services is a matter of critical~~
4 ~~importance not only to the individual, but also to the health and welfare of all citizens of the City and~~
5 ~~County. Intentional efforts to harass an individual in order to deter or prevent the individual from~~
6 ~~exercising his or her right to seek and obtain health care services are therefore contrary to the interests~~
7 ~~of the people of San Francisco.~~

8 ~~The Board of Supervisors finds that for many people seeking access to medical treatment, being~~
9 ~~forced to run a gauntlet of protestors who intend to deter or impede access to the health care facility~~
10 ~~can be directly injurious to the patient's health, even if the patient is not physically barred from entry.~~
11 ~~Other persons may be sufficiently intimidated to put off necessary or timely medical treatment entirely.~~
12 ~~The Board of Supervisors further finds that protests at the entrance to health care facilities in the City~~
13 ~~and County of San Francisco have often disrupted the operation of the facilities, as well as the ability~~
14 ~~of individuals to seek and obtain services within the facilities.~~

15 ~~In adopting this legislation, the Board of Supervisors recognizes both the fundamental~~
16 ~~constitutional right to assemble peaceably and to demonstrate on matters of public concern, as well as~~
17 ~~the right to seek and obtain health care. The Board of Supervisors finds that law enforcement officers~~
18 ~~often have difficulty determining when the exercise of the right to protest violates the competing right~~
19 ~~of those seeking access to health care facilities. The Board of Supervisors further finds that the~~
20 ~~provisions of this ordinance promote the full exercise of these rights and strike an appropriate~~
21 ~~accommodation between them. The failure of the Board of Supervisors to take steps to accommodate~~
22 ~~these competing interests may jeopardize the exercise of both privacy and the First Amendment rights.~~

23 ~~The Board of Supervisors finds that the buffer zone outside of health care facilities established~~
24 ~~by this legislation ensures that patients have unimpeded access to medical services without unduly~~
25 ~~impairing the ability of demonstrators to communicate their message to their intended audience. The~~

1 ~~buffer zone imposes content-neutral time, place and manner restrictions, which are tailored to serve a~~
2 ~~significant government interest, and which leave ample alternative channels of communication.~~

3 ~~This ordinance is not intended to create any limited, designated or general public fora. Rather it~~
4 ~~is intended to protect those who seek access to health care from conduct which violates their rights.~~

5

6 **SEC. 4302. DEFINITIONS.**

7 ~~(a) For purposes of this Article, the term "buffer zone" refers to a sphere of protection~~
8 ~~surrounding an individual seeking access to, passage from, or services within a health care facility,~~
9 ~~when that individual is within 100 feet of an exterior wall of a health care facility. The sphere is~~
10 ~~delineated by an eight foot radius extending in all directions from the individual seeking access to,~~
11 ~~passage from, or services within the health care facility. For purposes of this Section, distance shall be~~
12 ~~measured from any extension of the body of the individual seeking access to, passage from, or services~~
13 ~~within the facility to any extension of the body of, or any sign or object held by another person.~~

14 For purposes of this Article:

15 "Buffer zone" refers to the area encompassed by both of the following:

16 (1) the area on a public way or sidewalk encompassed by a radius of 25 feet from any
17 portion of an entrance, exit, or driveway of a reproductive health care facility; and
18 (2) the area encompassed by extending the outside boundaries of any entrance, exit, or
19 driveway of a health care facility in straight lines to the point where those lines intersect the sideline of
20 the street or the property line of the reproductive health care facility.

21 "Demonstration activity" refers to any activity involving expressive or symbolic content,
22 including but not limited to the following: protesting; demonstrating; picketing; displaying or
23 distributing pictures, literature, or other materials; and engaging in education or counseling activities.

24 ~~(b) For purposes of this Article, the term "health care facility" means a facility licensed~~
25 ~~pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code; a~~

1 ~~health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the~~
2 ~~Health and Safety Code; or any facility where medical care is regularly provided to individuals by~~
3 ~~persons licensed under Division 2 (commencing with Section 500) of the Business and Professions~~
4 ~~Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, provided that said facility~~
5 ~~provides reproductive health care services.~~

6 "Person" refers to any individual, firm, partnership, joint venture, company, corporation,
7 association, social club, fraternal organization, estate, trust, business trust, receiver, trustee, syndicate,
8 or any other group or combination acting as a unit except the United States of America, the State of
9 California, and any political subdivision of either.

10 "Reproductive health care facility" refers to a clinic licensed under Chapter 1 (commencing
11 with Section 1200) of Division 2 of the Health and Safety Code, or any other facility or business that
12 provides reproductive health care services, exclusively or in addition to other health care services.
13 Reproductive health care facility does not include a licensed hospital or a clinic or other facility owned
14 or operated by a licensed hospital.

15 (e) ~~For purposes of this Article, the term "Reproductive health care services"~~ refers to
16 all medical, surgical, counseling, referral, and informational services related to the human
17 reproductive system.

18 (d) ~~For purposes of this Article, the term "person" shall include, but is not limited to: 1)~~
19 ~~Individuals; 2) corporations; 3) not for profit organizations; 4) partnerships; 5) associations; and 6)~~
20 ~~groups or other entities. The term "person" shall not include an individual seeking access to, passage~~
21 ~~from, or services within a health care facility and his or her escorts.~~

1 **SEC. 4303. HARASSMENT OF INDIVIDUALS SEEKING ACCESS TO ENTERING OR**
2 **REMAINING IN BUFFER ZONE AT REPRODUCTIVE HEALTH CARE FACILITIES**
3 **PROHIBITED; EXEMPTIONS.**

4 (a) Prohibition. Except as specified in Section 4303(b), it shall be unlawful for any person
5 to enter or remain within a buffer zone~~harass, as defined in this Article, or attempt to harass an~~
6 ~~individual entering, exiting, or seeking care inside a health care facility.~~

7 (b) Exemptions. ~~For purposes of this Article, the term "harassment" refers to situations where,~~
8 ~~within 100 feet of an exterior wall of a health care facility, a person knowingly approaches another~~
9 ~~person within eight feet of such person, unless such other person consents, for the purpose of passing a~~
10 ~~leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with~~
11 ~~such other person. Section 4303(a) shall not apply to the following:~~

12 (1) Individuals entering or exiting the reproductive health care facility. This exemption
13 allows individuals to enter and pass through the buffer zone only while entering or exiting the
14 reproductive health care facility, and does not permit those individuals to stop or remain in the buffer
15 zone for any purpose, including but not limited to demonstration activity, or to engage in demonstration
16 activity while entering or exiting the reproductive health care facility.

17 (2) Employees, agents, or volunteers of the reproductive health care facility, acting
18 within the scope of their employment, agency, or volunteer service. This exemption does not allow
19 these employees, agents or volunteers to engage in demonstration activity within the buffer zone, even if
20 that demonstration activity is within the scope of their employment, agency, or volunteer service.

21 (3) Law enforcement, emergency medical, firefighting, construction, and utilities
22 personnel and federal, state, and municipal employees, acting within the scope of their employment.
23 This exemption does not allow these individuals to engage in demonstration activity within the buffer
24 zone.

(4) Individuals passing temporarily through the buffer zone to reach a destination within or on the other side of the buffer zone. This exemption applies to individuals who enter or pass through the buffer zone, without stopping, either to enter a residence or a business within the buffer zone other than the reproductive health care facility or to reach a destination on the other side of the buffer zone. This exemption does not allow these individuals to engage in demonstration activity while within or passing through the buffer zone. If an individual not subject to the exemptions in subsection (b)(1), (2), or (3) passes through the buffer zone five or more times in an hour, such activity will constitute *prima facie* evidence that the individual has violated Section 4303(a). The individual may rebut that presumption by presenting evidence that he or she has a legitimate personal or business, non demonstration activity purpose for passing through the buffer zone.

(c) Business Hours. Section 4303(a) applies only during a reproductive health care facility's posted business hours.

(d) Marking and Written Notice. Section 4303(a) applies only if the buffer zone is marked by the Department of Public Works (“DPW”) and a notice prepared by DPW is posted conspicuously near the buffer zone. A reproductive health care facility that wants its buffer zone marked and a notice posted shall submit a written request to the Department of Public Works (“DPW”). DPW shall measure and mark the buffer zone within 14 calendar days of the request. The DPW Director or designee shall prepare signs to provide to reproductive health care facilities, upon request, for posting. The signs shall provide notice regarding the prohibitions under this Article. The DPW Director or designee may adopt rules and regulations after a public hearing to set standards for marking and posting a notice at a buffer zone.

(e) Other Laws. Nothing in this Article shall preclude the enforcement of other state, federal, or municipal laws inside or outside of the buffer zone, including but not limited to those related to sidewalk obstruction.

1 **SEC. 4304. ENFORCEMENT.**

2 (a) *Criminal Enforcement.* Any person who violates Section 4303 of this Article shall be
3 guilty of a misdemeanor, and upon conviction thereof shall be punished by *imprisonment*
4 *incarceration* in the County Jail, fine, or both. Upon a first conviction for violation of Section
5 4303, the person shall be *imprisoned* *incarcerated* in the County Jail for up to three months, or
6 fined up to \$500, or both. Upon a subsequent conviction for violation of Section 4303, the
7 person shall be *imprisoned* *incarcerated* in the County Jail for up to six months, or fined up to
8 \$1000, or both.

9 (b) *Civil Enforcement.* An aggrieved *individual person* may enforce the provisions of this
10 Article by means of a civil action. *An aggrieved person includes any reproductive health care facility*
11 *whose buffer zone is the site of a violation of this Article.* Any person who violates any of the
12 provisions of this Article or who aids in the violation of this Article shall be liable to the
13 *individual aggrieved person* for special and general damages, but in no case less than \$1,000
14 plus attorneys' fees and the costs of the action. In addition, punitive damages may be
15 awarded in a proper case.

16 (c) *Other Enforcement.* Nothing in this Article shall preclude any person from seeking
17 any other remedies, penalties or procedures provided by law.

19 Section 3. Effective Date. This ordinance shall become effective 30 days from the
20 date of passage.

22 Section 4. Scope of Ordinance. In enacting this Ordinance, the Board intends to
23 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,
24 punctuation marks, charts, diagrams, or any other constituent parts of the Police Code that
25 are explicitly shown in this Ordinance as additions, deletions, Board amendment additions,

1 and Board amendment deletions in accordance with the "Note" that appears under the official
2 title of the Ordinance.

3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

5 By: ERIN BERNSTEIN
6 Deputy City Attorney
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