[Police, Administrative Codes - Protecting Access to Reproductive Health Facilities]

Ordinance amending the Police Code to extend the zone in which shouting and using amplified sound is prohibited outside a reproductive health care facility from 50 feet from the property line to 100 feet from the facility entrance or driveway, extend the zone in which following or harassing a person is prohibited from 25 feet from the facility entrance to 100 feet from the facility entrance, and specify that approaching within eight feet of a person inside the 100-foot perimeter of the facility entrance while impersonating a facility worker with the effect of intimidating the person is unlawful harassment; and amending the Administrative Code to direct that Police Department officers be trained annually on enforcement of local and state laws protecting access to reproductive health care facilities, and that the Police Department meet with representatives of a reproductive health care facility every two years, on request, to develop a plan to prevent and respond to incidents that interfere with access to the facility, the facility's operations, and/or the lawful exercise of First Amendment rights by the public.

NOTE: Unchanged Code text and uncodified text are in plain Arial font.

Additions to Codes are in <u>single-underline italics Times New Roman font</u>.

Deletions to Codes are in <u>strikethrough italics Times New Roman font</u>.

Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in strikethrough Arial font.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Article 43 of the Police Code is hereby amended by revising Sections 4301, 4302, 4303, 4304, and 4306, adding a new Section 4307, and renumbering existing Section 4307 as new Section 4308, to read as follows:

SEC. 4301, FINDINGS.

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

Maintaining access to reproductive health care services is a matter of critical importance not only to individuals, but also to the health, safety, and welfare of all residents of the City. Efforts to harass, obstruct, or otherwise interfere with individuals seeking reproductive health care services may deter, delay, and even prevent individuals from obtaining necessary reproductive health care services. These efforts, which often include forcing patients to run a gauntlet of demonstrators near the entrances, exits, and driveways of reproductive health care facilities, or to confront intimidating demonstrators stationed at or near those entrances, exits, and driveways, also disrupt the ability of staff at reproductive health care facilities to devote their full efforts to providing health care services and divert valuable facility resources away from patients. Pedestrians, including patients and employees seeking to receive or provide health care, are often blocked or slowed on sidewalks adjacent to reproductive health care facilities by numerous signs lined up in the public right of way, and patients in facility waiting rooms are subjected to loud music and shouting directed inside the facility by demonstrators outside the door. These factors, including difficulty entering and exiting the facility as well as loud noise once inside the facility, can lead to increased patient

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stress that may affect the efficacy and complication rate of the medical care sought within. Actions that result in such obstruction, delay, and deterrence of patients, and diversion of reproductive health care facilities' staff and resources, undermine the City's interest in maintaining the public health, safety, and welfare, and in preserving its residents' constitutional right to privacy.

Standing on equal footing with the right to access health care services, including reproductive health care services, are the free speech and assembly rights of those who would gather and speak on matters of public concern. Under this Article 43, in Ordinances 226-93 and 214-03, the Board of Supervisors previously attempted to balance these rights by prohibiting harassment, within 100 feet of an exterior wall of a health care facility, of individuals entering, exiting, or seeking services at a health care facility, with harassment defined as "knowingly approach[ing] another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person." After that prohibition proved ineffective, the The Article was then amended in Ordinance 88-13 to create a "buffer zone" that prohibited individuals from remaining within 25 feet of a reproductive health care facility, with certain exceptions. The "buffer zone" was helpful in preventing harassment, delay, and deterrence of patients seeking vital health care services, and in particular reproductive health care services, and adequately prevented distraction and diversion of health care providers from their core mission of providing services in a safe and supportive environment. But in the wake of the United States Supreme Court decision in McCullen v. Coakley, 573 U.S. 464 (2014), 573 U.S the validity of such buffer zones has been was called into question. In light of the McCullen decision, with the enactment of Ordinance No. 230-14 this Article <u>was</u> again amended to balance the right to speak and engage in sidewalk

1	counseling near reproductive health care clinics with the right to access constitutionally
2	protected health care without fear of physical harm, harassment, or delay.
3	(d) In Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022), the United
4	States Supreme Court overruled Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood of
5	Southeastern Pa. v. Casey, 505 U.S. 833 (1992), and held that the Constitution of the United States
6	does not confer a right to abortion. Following that decision, President Biden issued an Executive
7	Order on Protecting Access to Reproductive Healthcare Services, emphasizing the need to ensure the
8	safety of patients and healthcare providers and to protect the security of facilities providing
9	reproductive health care services.
10	(e) The federal Freedom of Access to Clinic Entrances Act of 1994 (the "FACE Act"), and
11	the California Freedom of Access to Clinic and Church Entrances Act (the "California FACE Act"),
12	both prohibit the use of force, threats of force, or physical obstruction to prevent a patient or health
13	care provider from accessing a reproductive health care facility. California's Assembly Bill No. 1356
14	(2022) amended the California FACE Act to further strengthen protections for reproductive health
15	service providers and patients, adding a prohibition on videotaping, photographing, or recording
16	patients or providers within 100 feet of the facility or disclosing or distributing those images; and
17	updating and expanding online privacy laws and peace officer training requirements relative to
18	offenses aimed at blocking access to reproductive health facilities and care.
19	(f) The 2022 National Clinic Violence Survey revealed that 38% of clinics reported an
20	increase in harassment and violence at their facilities following the Dobbs decision. Specific forms of
21	violence and intimidation have surged, with 16.2% of clinics reporting blockades at entrances
22	compared to 9.1% in 2018, and 69% experiencing daily or weekly disruptive protests. This means that
23	these facilities, their staffs, and their patient communities have been increasingly subjected to
24	harassment and intimidation as they seek or provide essential health care.

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public health, safety, and welfare, on the one hand, and the rights of free speech and assembly, on the other.

(p) Article 43 applies only to reproductive health care facilities, not health care facilities generally. In addition. Article 43 does not apply to licensed hospitals or to reproductive health care facilities owned or operated by licensed hospitals. This scope ensures the Article is narrowly tailored to address the significant governmental interests it serves, and leaves other health care facilities and locations available for speech. Individuals attempting to access reproductive health care facilities to obtain reproductive health care services have been subjected to harassing or intimidating activity from extremely close proximity, tending to hamper, delay or deter their access to those facilities and services and thus subverting their legal rights to seek and obtain legal health care services. The Board finds that reproductive health care facilities that are not part of a licensed hospital, and not owned or operated by a licensed hospital, are more vulnerable to such subversion of their patients' rights on account of the layout and design of their facilities and parking areas as well as their staff resources and deployment. Further, reproductive health care facilities not affiliated with hospitals commonly possess fewer resources for providing adequate security and safety to individuals seeking access to reproductive health care services. Thus, Article 43 provides narrowly tailored, content-neutral restrictions where they are most necessary to further the significant government interests the Article serves.

(q) The Board finds that the modest scope of the prohibition on following and harassing individuals, impeding access, and making excessive noise in close proximity to reproductive health care facilities is necessary to ensure that patients may gain safe and unimpeded access to reproductive health care services, while allowing speakers to effectively communicate their messages to their intended audience. This prohibition applies equally to all, regardless of the content of their speech.

(r)_The Board further finds that intimidating behavior, including excessively loud demonstration activity, as well as following and harassing patients, staff, and other individuals around the entrances, exits, and driveways of reproductive health care facilities can impede pedestrian and vehicle traffic and create safety hazards on the sidewalks and roadways, and that the limitations this Article <u>43</u> imposes on aggressive and intimidating behavior will help promote safe and effective pedestrian and vehicle traffic flow around reproductive health care facilities.

independent of the content of those activities – conducted around the entrances, exits, and driveways of reproductive health care facilities can adversely affect the physical and emotional health and well-being of patients seeking services at a reproductive health care facility. Noise control is particularly important around medical facilities during surgery and recovery periods. As has been noted by the Supreme Court, noise produced by protesters that can be heard within a clinic, may cause stress in the patients; this includes loud, disruptive noise heard during patient intake, surgical procedures, and while recuperating in the recovery rooms. The Board finds that this Article <u>43</u> will provide a protective space for patients and thereby help avoid those adverse health consequences.

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

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

SEC. 4302. DEFINITIONS.

For purposes of this Article <u>43</u>:

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"Harass" means to engage in a course of conduct directed at a specific person or persons that alarms, seriously distresses, torments, or terrorizes the person. Harassment does not include, among other things, quiet, consensual conversation conducted from a stationary position. Harassment includes, but is not limited to:

- (a) Approaching within eight feet of a person if that person indicates *he or she does they* <u>do</u> not want to be approached, except as necessary to enter or exit the reproductive health care facility;
- (b) Approaching within eight feet of a person while impersonating a reproductive health care facility worker or volunteer registered with the facility, including by wearing clothing intended to resemble that of a reproductive health care facility worker or volunteer, or by verbally identifying oneself as a reproductive health care facility worker or volunteer, with the effect of intimidating the person;
- $(b\underline{c})$ Following a person if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another, or damage to or loss of property;
- (ed) Shouting at a person within $25\underline{100}$ feet of the entrance of a reproductive health care facility;
- (\underline{de}) Intentionally touching or causing physical contact with a person without that person's consent;
- (ef) Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including, but not limited to (1) intentionally causing a pedestrian to take evasive action to avoid physical contact and/or (2) placing signs on the sidewalk such that the flow of pedestrian traffic is restricted. provided, however, that this subpart (f) does This

subsection (e) shall not prohibit individuals from holding or wearing signs while using the sidewalk; or

(fg) Using violent or threatening gestures toward a person.

SEC. 4303. INTERFERENCE WITH ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES PROHIBITED.

- (a) Prohibition. It shall be unlawful to:
- (1) Follow or harass any person within $25\underline{100}$ feet of the entrance of a reproductive health care facility; provided, however, that subsection (a)(1) shall not apply unless marking and notice of the boundary zone have been provided as follows: The $25\underline{100}$ -foot boundary is measured and marked by the Department of Public Works ("DPW") and a notice prepared by DPW is posted conspicuously near the $25\underline{100}$ -foot boundary. A reproductive health care facility that wants its $25\underline{100}$ -foot boundary marked and a notice posted shall submit a written request to DPW. DPW shall measure and mark the $25\underline{100}$ -foot boundary within 14 days of the request;
 - (2) Impede access to the door of a reproductive health care facility; or
- (3) Shout, or cause to be produced any amplified sound beyond the volume of a conversational speaking voice, including use of a loudspeaker, bullhorn, or electronic audio instrument or device that produces or reproduces amplified sound, on any public street or sidewalk within 50100 feet of the property line of a property housing a entrance of a reproductive health care facility; provided, however, that this subsection (a)(3) shall not apply to the following:
- (A) Vehicles in compliance with or exempted tram California Vehicle Code section 27007;

(B) Use of a car horn or other warning device as permitted by California Vehicle Code sections 27000 to 27006; and

(C) Law enforcement or public safety officials acting in the scope of their employment, to the extent necessary to attend to public health/safety issues.

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SEC. 4304. ENFORCEMENT.

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(c) **Dispersal Order.** A law enforcement official may order the immediate dispersal of a gathering that continues to violate Section 4303 after a verbal warning. A dispersal order issued pursuant to this subsection (c) shall include the following statements: (1) the gathering has substantially impeded access to or departure from the reproductive health care facility; (2) each member of the gathering shall, under the penalty of arrest and prosecution, immediately disperse and cease to stand or be located within at least 25100 feet of an entrance or a driveway to the reproductive health care facility; and (3) the order shall remain in place for eight hours or until the close of business of the reproductive health facility, whichever is earlier. This subsection (c) shall apply during the business hours of a reproductive health care facility and up to one hour before and after the posted business hours.

SEC. 4306. ARTICLE ACCOMMODATES COMPETING RIGHTS.

(a) In adopting this Article <u>43</u>, the Board of Supervisors recognizes both the fundamental constitutional right to assemble peaceably and to demonstrate on matters of public concern, as well as the right to seek and obtain health care. This <u>legislationArticle</u>

promotes the full exercise of these rights and strikes an appropriate accommodation between them.

(b) It is not the intention of the Board of Supervisors to interfere with the right to protest, including the right to protest conditions of employment. Rather it is the intention of the Board of Supervisors to impose reasonable time, place, and manner restrictions on all protests, to protect the right to seek and obtain health care. This Article does not prohibit conduct by a party to a labor dispute in furtherance of labor or management objectives in that dispute.

SEC. 4307. NO CONFLICT WITH STATE OR FEDERAL LAW.

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SEC. 43074308. SEVERABILITY.

If any part or provision of this Article <u>43</u>, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Article are severable.

Section 2. The Administrative Code is hereby amended by adding Chapter 96J, consisting of Section 96J.1, to read as follows:

CHAPTER 96J:

PROTECTING ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES

SEC. 96J.1. POLICE DEPARTMENT TRAINING AND SAFETY PLANS FOR REPRODUCTIVE HEALTH CARE FACILITIES.

Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM: DAVID CHIU, City Attorney

By: <u>/s/ Sarah Crowley</u> SARAH CROWLEY Deputy City Attorney

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City and County of San Francisco Tails Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 241040 Date Passed: December 03, 2024

Ordinance amending the Police Code to extend the zone in which shouting and using amplified sound is prohibited outside a reproductive health care facility from 50 feet from the property line to 100 feet from the facility entrance or driveway, extend the zone in which following or harassing a person is prohibited from 25 feet from the facility entrance to 100 feet from the facility entrance, and specify that approaching within eight feet of a person inside the 100-foot perimeter of the facility entrance while impersonating a facility worker with the effect of intimidating the person is unlawful harassment; and amending the Administrative Code to direct that Police Department officers be trained annually on enforcement of local and state laws protecting access to reproductive health care facilities, and that the Police Department meet with representatives of a reproductive health care facility every two years, on request, to develop a plan to prevent and respond to incidents that interfere with access to the facility, the facility's operations, and/or the lawful exercise of First Amendment rights by the public.

November 14, 2024 Public Safety and Neighborhood Services Committee - RECOMMENDED AS COMMITTEE REPORT

November 19, 2024 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

December 03, 2024 Board of Supervisors - FINALLY PASSED

Ayes: 10 - Chan, Dorsey, Engardio, Mandelman, Melgar, Peskin, Preston, Ronen, Safai and Walton

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/3/2024 by the Board of Supervisors of the City and County of San Francisco.

> Angela Calvillo Clerk of the Board

London N. Breed Mayor

Date Approved