

File No. 110899

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee CITY OPERATIONS AND
NEIGHBORHOOD SERVICES

Date 9/26/11

Board of Supervisors Meeting

Date _____

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Completed by: Gail Johnson

Date 9/22/11

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document is in the file.

1 [Administrative Code - False Advertising by Limited Services Pregnancy Centers]

2
3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 93,**
4 **Sections 93.1 through 93.5, to prohibit limited services pregnancy centers from making**
5 **false or misleading statements to the public about pregnancy-related services the**
6 **centers offer or perform.**

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

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

11 Section 1. The San Francisco Administrative Code is hereby amended by adding
12 Chapter 93, Sections 93.1 through 93.5, to read as follows:

13 **SEC. 93.1. TITLE.**

14 The Chapter shall be known as the Pregnancy Information Disclosure and Protection
15 Ordinance.

16 **SEC. 93.2. FINDINGS.**

17 1. San Francisco serves as the medical provider of last resort for indigent individuals who need
18 medical care. These individuals include women facing unexpected pregnancies.

19 2. A woman's right to choose whether to terminate a pregnancy is protected by both the federal
20 and state Constitutions, and is protected from interference by third parties and the government.

21 3. Many people have deeply held religious and moral beliefs both supporting and opposing
22 abortion, and the City respects the right of individuals to express and promote such beliefs.

23 4. When a woman considers termination of a pregnancy, time is a critical factor. Delays in
24 deciding to terminate a pregnancy may mean that a less invasive option is no longer available or that
25 the option to terminate a pregnancy is no longer available.

1 5. In recent years, clinics that seek to counsel clients against abortion have become common
2 throughout California. These clinics are often referred to as crisis pregnancy centers ("CPCs").
3 Although some CPCs are licensed to provide various medical services to pregnant women, most CPCs
4 are not licensed medical clinics.

5 6. Some CPCs openly acknowledge, in their advertising and their facilities, that they do not
6 provide abortions or emergency contraception or refer clients to other providers of such services.
7 Some of these same CPCs also openly acknowledge that they believe abortion is morally wrong. Many
8 CPCs, however, seek to mislead women contemplating abortion into believing that their facilities offer
9 abortion services and unbiased counseling.

10 7. CPCs often purchase "pay per click" ads on online search services such as Google for terms
11 such as "abortion", so that persons searching for abortion services will see a link and advertisement
12 for the CPC at the top of the results page. In addition, many CPCs advertise on billboards, mass-
13 transit facilities, and through websites.

14 8. Most clients do not come to CPCs as a result of a referral from a medical professional.
15 Clients seeking information regarding options to terminate a pregnancy commonly are experiencing
16 emotional and physical stress and are therefore especially susceptible to false or misleading elements
17 in advertising by CPCs. These circumstances raise the need for regulation that is more protective of
18 potential consumers of pregnancy center services.

19 9. Because of the time-sensitive and constitutionally protected nature of the decision to
20 terminate a pregnancy, false and misleading advertising by clinics that do not offer or refer clients for
21 abortion or emergency contraception is of special concern to the City. When a woman is misled into
22 believing that a clinic offers services that it does not in fact offer, she loses time crucial to the decision
23 whether to terminate a pregnancy. Under these same circumstances a client may also lose the option
24 to choose a particular procedure, or to terminate the pregnancy at all.

1 10. The City respects the right of limited services pregnancy centers to counsel against
2 abortions, if the centers are otherwise operating in compliance with this Chapter, and the City does not
3 intend by this Chapter to regulate, limit or curtail such advocacy.

4 11. However, if women who have chosen to terminate a pregnancy are misled and delayed by
5 the false advertising of CPCs, the cost of providing more invasive and expensive options may fall upon
6 City health facilities, which provide the medical services of last resort for the City's indigent
7 population.

8 12. After carefully balancing the constitutionally protected right of a woman to choose to
9 terminate her pregnancy, the right of individuals to express their religious and ethical beliefs about
10 abortion, the harm to women worked by even slight delays that can be caused by false advertising for
11 pregnancy and/or abortion services, and the cost to the City that can accrue from such delay, the City
12 has determined that there exists a need to regulate false and misleading advertising by pregnancy
13 clinics offering limited services.

14 **SEC. 93.3. DEFINITIONS.**

15 For the purposes of this Chapter, the following terms shall have the following meanings:

16 (a) "Abortion" shall mean the termination of a pregnancy for purposes other than producing a
17 live birth. "Abortion" includes, but is not limited to, a termination using pharmacological agents.

18 (b) "Client" shall mean an individual who is inquiring about or seeking services at a pregnancy
19 services center.

20 (c) "Emergency contraception" shall mean one or more prescription drugs (1) used separately
21 or in combination, to prevent pregnancy, when administered to or self-administered by a patient, within
22 a medically-recommended amount of time after sexual intercourse, (2) dispensed for that purpose in
23 accordance with professional standards of practice, and (3) determined by the United States Food and
24 Drug Administration to be safe for that purpose.

1 (d) "Health information" shall mean any oral or written information in any form or medium
2 that relates to health insurance and/or the past, present or future physical or mental health or condition
3 of a client.

4 (e) "Licensed medical provider" shall mean a person licensed or otherwise authorized under
5 the provisions of federal, state, or local law to provide medical services.

6 (f) "Limited services pregnancy center" shall mean a pregnancy services center, as defined in
7 subsection (g), that does not directly provide or provide referrals to clients for the following services:
8 (1) abortions; or (2) emergency contraception.

9 (g) "Pregnancy services center" shall mean a facility, licensed or otherwise, and including
10 mobile facilities, the primary purpose of which is to provide services to women who are or may be
11 pregnant, that either (1) offers obstetric ultrasounds, obstetric sonograms or prenatal care to pregnant
12 women, or (2) has the appearance of a medical facility. A pregnancy service center has the
13 appearance of a medical facility if two or more of the following factors are present:

14 (A) The facility offers pregnancy testing and/or pregnancy diagnosis;

15 (B) The facility has staff or volunteers who wear medical attire or uniforms;

16 (C) The facility contains one or more examination tables;

17 (D) The facility contains a private or semi-private room or area containing medical
18 supplies and/or medical instruments;

19 (E) The facility has staff or volunteers who collect health information from clients; or

20 (F) The facility is located on the same premises as a state-licensed medical facility or
21 provider or shares facility space with a state-licensed medical provider.

22 It shall be prima facie evidence that a facility has the appearance of a medical facility if it has
23 two or more of the characteristics listed above.

24 (h) "Premises" shall mean land and improvements or appurtenances or any part thereof.
25

1 (i) "Prenatal care" shall mean services consisting of physical examination, pelvic examination
2 or clinical laboratory services provided to a woman during pregnancy. Clinical laboratory services
3 refers to the microbiological, serological, chemical, hematological, biophysical, cytological or
4 pathological examination of materials derived from the human body, for purposes of obtaining
5 information, for the diagnosis, prevention, or treatment of disease or the assessment of health
6 condition.

7 **SEC. 93.4. VIOLATION.**

8 (a) It is unlawful for any limited services pregnancy center, with intent directly or indirectly to
9 perform pregnancy-related services (professional or otherwise), to make or disseminate or cause to be
10 made or disseminated before the public in the City, or to make or disseminate or cause to be made or
11 disseminated from the City before the public anywhere, in any newspaper or other publication, or any
12 advertising device or in any other manner or means whatever, including over the Internet, any
13 statement, concerning those services, professional or otherwise, or concerning any circumstance or
14 matter of fact connected with the proposed performance or disposition thereof, which is untrue or
15 misleading, whether by statement or omission, that the limited services pregnancy center knows or
16 which by the exercise of reasonable care should know to be untrue or misleading.

17 (b) It is unlawful for any limited services pregnancy center, with intent directly or indirectly to
18 perform pregnancy-related services (professional or otherwise), to make or disseminate or cause to be
19 so made or disseminated any such statement identified in subsection (a) as part of a plan or scheme
20 with the intent not to perform the services expressly or impliedly offered, as advertised.

21 **SEC. 93.5. ENFORCEMENT.**

22 (a) The City Attorney may enforce the provisions of this Chapter through a civil action in any
23 court of competent jurisdiction. Before filing an action under this Chapter, the City Attorney shall give
24 written notice of the violation to the limited services pregnancy center. The written notice shall
25 indicate that the limited services pregnancy center has ten (10) days in which to cure the false,

1 misleading, or deceptive advertising. If the limited services pregnancy center has not responded to the
2 written notice within ten (10) days, or refuses to cure the false, misleading, or deceptive advertising
3 within that period, the City Attorney may file a civil action.

4 (b) The City Attorney may apply to any court of competent jurisdiction for injunctive relief
5 compelling compliance with any provision of this Chapter and correcting the effects of the false,
6 misleading, or deceptive advertising. Such an injunction may require a limited services pregnancy
7 center to:

8 (1) Pay for and disseminate appropriate corrective advertising in the same for as the
9 false, misleading, or deceptive advertising.

10 (2) Post a notice on its premises, in a location clearly noticeable from the waiting area,
11 examination area, or both, stating:

12 (A) Whether there is a licensed medical doctor, registered nurse, or other
13 licensed medical practitioner on staff at the center; and

14 (B) Whether abortion, emergency contraception, or referrals for abortion or
15 emergency contraception are available at the center.

16 (3) Such other narrowly tailored relief as the court deems necessary to remedy the
17 adverse effects of the false, misleading, or deceptive advertising on women seeking pregnancy-related
18 services.

19 (c) Upon a finding by a court of competent jurisdiction that a limited services pregnancy center
20 has violated Section 93.4 of this Chapter, the City shall be entitled to recover civil penalties from each
21 and every party responsible for the violation of not less than fifty dollars (\$50) and not more than five
22 hundred dollars (\$500) per violation. In addition, if the City prevails it shall be entitled to reasonable
23 attorney's fees and costs pursuant to order of the court.

1 (e) Nothing in this Chapter shall be interpreted as restricting or otherwise limiting the
2 enforcement authority that state law or the Charter or Municipal Code vest in the City, its agencies,
3 officers or employees or any state agency.

4 (f) Nothing in this Chapter shall be interpreted as creating a right of action for any party other
5 than the City.

6 (g) Nothing in this Chapter shall be interpreted as restricting, precluding or otherwise limiting
7 a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall
8 not attach as a result of any court action to enforce the provisions of this Chapter.

9 Section 2. **General Provisions.**

10 (a) **Severability.** If any section, subsection, sentence, clause, or phrase of this
11 ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of
12 competent jurisdiction, such decision shall not affect the validity of the remaining portions of
13 the ordinance. The Board of Supervisors hereby declares that it would have passed this
14 ordinance and each and every section, subsection, sentence, clause, or phrase not declared
15 invalid or unconstitutional without regard to whether any portion of this ordinance would be
16 subsequently declared invalid or unconstitutional.

17 (b) **No Conflict with State or Federal Law.** Nothing in this ordinance shall be
18 interpreted or applied so as to create any requirement, power, or duty in conflict with any
19 federal or state law.

20 (c) **Undertaking for the General Welfare.** In adopting and implementing this
21 ordinance, the City and County of San Francisco is assuming an undertaking only to promote
22 the general welfare. It is not assuming, nor is it imposing in its officers and employees, an
23 obligation for breach of which it is liable in money damages to any person who claims that
24 such breach proximately caused injury.

25 //

1 Section 3. **Effective Date.** This ordinance shall become effective 30 days from the
2 date of passage.

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

5
6 By:



7 ERIN BERNSTEIN
8 Deputy City Attorney

LEGISLATIVE DIGEST

[Administrative Code – Pregnancy Information Disclosure and Protection]

Ordinance amending the San Francisco Administrative Code by adding Chapter 93, Sections 93.1 through 93.5, to prohibit false advertising by limited services pregnancy centers.

Existing Law

San Francisco does not currently have any laws regulating the advertising of limited services pregnancy centers.

Amendments to Current Law

The proposed ordinance would amend the San Francisco Administrative Code by adding Chapter 93, Sections 93.1 through 93.5 to prohibit false, misleading, or deceptive advertising by limited services pregnancy centers. The ordinance defines "limited services pregnancy center" as a pregnancy services center that does not directly provide, or provide referrals to clients for, abortions or emergency contraception.

The proposal would authorize the City Attorney to enforce the ordinance by filing a lawsuit against any limited services pregnancy center violating the prohibition on false advertising. Before filing suit, the City Attorney would be required to give a limited services pregnancy center a minimum of 10-days notice and an opportunity to change its advertising.

The intent of this proposed ordinance is to protect consumers of pregnancy-related services in San Francisco by preventing centers that offer only limited pregnancy services from advertising in a manner that misleads consumers as to the type or scope of the services provided.

Background Information

The ordinance would enable consumers seeking pregnancy-related services, including abortion, to choose a center that provides the time-sensitive services they are seeking without being delayed by deceptive advertising.