

1 [Police Code - Access to Reproductive Health Care Facilities]

2

3 **Ordinance amending the Police Code to repeal the prohibition on entering or remaining**
 4 **within a 25-foot buffer zone of a reproductive health care facility; to prohibit individuals**
 5 **from following or harassing others within 25 feet of the entrance to such a facility; to**
 6 **prohibit impeding access to the door of such a facility; and to prohibit excessive noise**
 7 **through yelling or amplification of sound within 50 feet of such a facility.**

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NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
 9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
 10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
 11 **Board amendment additions** are in double-underlined Arial font.
 12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
 13 **Asterisks (* * * *)** indicate the omission of unchanged Code
 14 subsections or parts of tables.

12

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

14

15 Section 1. The Police Code is hereby amended by revising Article 43, Sections 4301,
 16 4302, 4303, 4304, and 4306, to read as follows:

17

ARTICLE 43: ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES.

18

SEC. 4301. FINDINGS.

19

20 Every person in the City and County of San Francisco ("City") has a fundamental right
 21 to privacy protected not only by the United States Constitution, but also explicitly guaranteed
 22 in Article I, Section 1 of the California Constitution. This right to privacy includes the right to
 23 access all legal health care services, including reproductive health care services.

23

24 Maintaining access to reproductive health care services is a matter of critical
 25 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

1 reproductive health care services may deter, delay, and even prevent individuals from
2 obtaining necessary reproductive health care services. These efforts, which often include
3 forcing patients to run a gauntlet of demonstrators near the entrances, exits, and driveways of
4 reproductive health care facilities, or to confront intimidating demonstrators stationed at or
5 near those entrances, exits, and driveways, also disrupt the ability of staff at reproductive
6 health care facilities to devote their full efforts to providing health care services and divert
7 valuable facility resources away from patients. Pedestrians, including patients and employees
8 seeking to receive or provide health care, are often blocked or slowed on sidewalks adjacent to
9 reproductive health care facilities by numerous signs lined up in the public right of way, and patients in
10 facility waiting rooms are subjected to loud music and shouting directed inside the facility by
11 demonstrators outside the door. These factors, including difficulty entering and exiting the facility as
12 well as loud noise once inside the facility, can lead to increased patient stress that may affect the
13 efficacy and complication rate of the medical care sought within. Actions that result in such
14 obstruction, delay, and deterrence of patients, and diversion of reproductive health care
15 facilities' staff and resources, undermine the City's interest in maintaining the public health,
16 safety, and welfare, and in preserving its residents' constitutional right to privacy.

17 Standing on equal footing with the right to access health care services, including
18 reproductive health care services, are the free speech and assembly rights of those who
19 would gather and ~~raise their voices~~ speak on matters of public concern. Under this Article, the
20 Board of Supervisors previously attempted to balance these rights by prohibiting harassment,
21 within 100 feet of an exterior wall of a health care facility, of individuals entering, exiting, or
22 seeking services at a health care facility, with harassment defined as "knowingly
23 approach[ing] another person within eight feet of such person, unless such other person
24 consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging
25 in oral protest, education, or counseling with such other person." ~~That~~ After that prohibition ~~has~~

1 ~~proven~~proved ineffective-, the Article was amended to create a “buffer zone” that prohibited
2 individuals from remaining within 25 feet of a reproductive health care facility, with certain exceptions.
3 The “buffer zone” was helpful in preventing~~Due to the density and space constraints of the City's~~
4 ~~urban landscape, that prohibition has not adequately prevented~~ harassment, delay, and deterrence
5 of patients seeking vital health care services, and in particular reproductive health care
6 services, ~~not~~ and adequately prevented distraction and diversion of health care providers from
7 their core mission of providing services in a safe and supportive environment. But in the wake
8 of the United States Supreme Court decision in McCullen v. Coakley (2014) 573 U.S. the validity
9 of such buffer zones has been called into question. In light of the McCullen decision, with the
10 enactment of Ordinance No. _____, this Article is again amended to balance the right to speak and
11 engage in sidewalk counseling near reproductive health care clinics with the right to access
12 constitutionally protected health care without fear of physical harm, harassment, or delay.

13 The Board of Supervisors hereby finds that ~~the creation of a buffer zone, as defined in~~
14 ~~Police Code Section 4302 as amended by Ordinance No. 88-13, and a prohibition on entering or~~
15 ~~remaining in that buffer zone as specified in Police Code Section 4303 as amended by Ordinance No.~~
16 ~~88-13, with certain exceptions,~~ Article 43 is necessary to promote the full exercise of the right to
17 privacy by patients seeking vital reproductive health care services and is also necessary to
18 maintain public health, safety, and welfare within the City. The Board of Supervisors further
19 finds that this Article strikes a lawful and appropriate accommodation between the right to
20 privacy and to access reproductive health care services and the needs of public health,
21 safety, and welfare, on the one hand, and the rights of free speech and ~~association~~assembly, on
22 the other.

23 Article 43, ~~as amended by Ordinance No. 88-13,~~ applies only to reproductive health care
24 facilities, ~~not~~ health care facilities generally. In addition, Article 43, ~~as amended, Ordinance No.~~
25 ~~88-13,~~ does not apply to licensed hospitals or to reproductive health care facilities owned or

1 operated by licensed hospitals. This scope ensures the Article is narrowly tailored to address
2 the significant governmental interests it serves, and leaves other health care facilities and
3 locations available for speech. Individuals attempting to access reproductive health care
4 facilities to obtain reproductive health care services have been subjected to harassing or
5 intimidating activity from extremely close proximity, tending to hamper, delay or deter their
6 access to those facilities and services and thus subverting their legal rights to seek and obtain
7 legal health care services. The Board finds that reproductive health care facilities that are not
8 part of a licensed hospital, and not owned or operated by a licensed hospital, are more
9 vulnerable to such subversion of their patients' rights on account of the layout and design of
10 their facilities and parking areas as well as their staff resources and deployment. Further,
11 reproductive health care facilities not affiliated with hospitals commonly possess fewer
12 resources for providing adequate security and safety to individuals seeking access to
13 reproductive health care services. Thus, Article 43, *as amended by Ordinance No. 88-13 imposes*
14 narrowly tailored, content-neutral restrictions where they are most necessary to further the
15 significant government interests the Article serves.

16 The Board finds that the modest scope of the ~~buffer zone~~ *prohibition on following and*
17 *harassing individuals, impeding access, and making excessive noise in close proximity to reproductive*
18 *health care facilities is necessary is sufficient* to ensure that patients may gain safe and
19 unimpeded access to reproductive health care services, while allowing speakers to effectively
20 communicate their messages to their intended audience. *This prohibition applies equally to all,*
21 *regardless of the content of their speech.*

22 The Board further finds that *intimidating behavior, including excessively loud demonstration*
23 *activity, as well as following and harassing patients, staff, and other individuals* ~~obstructions and~~
24 ~~demonstrations~~ around the entrances, exits and driveways of reproductive health care facilities
25 can impede pedestrian and vehicle traffic and create safety hazards on the sidewalks and

1 roadways, and that ~~this buffer zone~~ the limitations this Article imposes on aggressive and
2 intimidating behavior will help promote safe and effective pedestrian and vehicle traffic flow
3 around reproductive health care facilities. ~~In addition, the buffer zone will reduce disputes and~~
4 ~~confrontations requiring law enforcement services, and will protect property rights.~~

5 The Board further finds that loud, harassing, and intimidating activities—~~independent of~~
6 the content of those activities—conducted around the entrances, exits and driveways of
7 reproductive health care facilities can adversely affect the physical and emotional health and
8 well-being of patients seeking services at a reproductive health care facility. Noise control is
9 particularly important around medical facilities during surgery and recovery periods. As has been
10 noted by the Supreme Court, noise produced by protesters that can be heard within a clinic, may cause
11 stress in the patients; this includes loud, disruptive noise heard during patient intake, surgical
12 procedures and while recuperating in the recovery rooms. The Board finds that this ~~buffer zone~~
13 Article will provide a protective space for patients and thereby help avoid those adverse health
14 consequences.

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

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

21 **SEC. 4302. DEFINITIONS.**

22 For purposes of this Article:

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

24 — ~~(1) the area on a public way or sidewalk encompassed by a radius of 25 feet from any~~
25 ~~portion of an entrance, exit, or driveway of a reproductive health care facility; and~~

1 —~~(2) the area encompassed by extending the outside boundaries of any entrance, exit, or~~
2 ~~driveway of a health care facility in straight lines to the point where those lines intersect the sideline of~~
3 ~~the street or the property line of the reproductive health care facility.~~

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

7 "Amplified sound" means a sound augmented by any electronic or other means that increases
8 the sound level or volume beyond that of a conversational speaking voice.

9 "Follow" means to physically pursue an individual once that individual has indicated verbally
10 or non-verbally he or she does not wish to be approached or engage in conversation.

11 "Gathering" means two or more individuals.

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

16 (1) Approaching within eight feet of a person if that person indicates he or she does not
17 want to be approached, except as necessary to enter or exit the reproductive health care facility;

18 (2) Following a person if that conduct is intended or is likely to cause a reasonable
19 person to fear bodily harm to oneself or to another, or damage to or loss of property;

20 (3) Shouting at a person within 25 feet of the entrance of a reproductive health care
21 facility;

22 (4) Intentionally touching or causing physical contact with a person without that
23 person's consent;

24 (5) Intentionally blocking or interfering with the safe or free passage of a pedestrian or
25 vehicle by any means, including, but not limited to (a) intentionally causing a pedestrian to take evasive

1 action to avoid physical contact and/or (b) placing signs on the sidewalk such that the flow of
2 pedestrian traffic is restricted. This subsection (5) shall not prohibit individuals from holding or
3 wearing signs while using the sidewalk; or

4 (6) Using violent or threatening gestures toward a person.

5 “Impede” means to obstruct, block, detain, or render passage impossible, unsafe, or difficult.

6 “Law Enforcement Official” means a member of a law enforcement agency, including but not
7 limited to a member of a municipal, metropolitan or state police department, sheriffs, or deputy
8 sheriffs.

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

13 “Public Safety Official” means a member of a law enforcement agency, fire department, or
14 other state, federal, or municipal employee charged with protection of public health or safety.

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

20 "Reproductive health care services" refers to all medical, surgical, counseling, referral,
21 and informational services related to the human reproductive system.

22 “Shout” refers to any audible activity not electronically amplified originating from an
23 individual that is beyond that of a conversational speaking voice, including vocalizations that are
24 audible from more than 15 feet away, as well as vocalizations intended to carry from the street or
25 public sidewalk to the inside of a reproductive health care facility.

1 **SEC. 4303. INTERFERENCE WITH ACCESS TO REPRODUCTIVE HEALTH CARE**
2 **FACILITIES PROHIBITED ENTERING OR REMAINING IN BUFFER ZONE AT**
3 **REPRODUCTIVE HEALTH CARE FACILITIES PROHIBITED; EXEMPTIONS.**

4 (a) **Prohibition. It shall be unlawful to:**

5 _____ (1) Follow or harass any person within 25 feet of the entrance of a reproductive health
6 care facility; provided, however, that subsection (a)(1) shall not apply unless marking and notice of the
7 boundary zone have been provided as follows: ~~Prohibition. Except as specified in Section 4303(b), it~~
8 shall be unlawful for any person to enter or remain within a buffer zone. The 25-foot boundary is
9 measured and marked by the Department of Public Works ("DPW") and a notice prepared by DPW is
10 posted conspicuously near the 25-foot boundary. A reproductive health care facility that wants its 25-
11 foot boundary marked and a notice posted shall submit a written request to DPW. DPW shall measure
12 and mark the 25-foot boundary within 14 days of the request;

13 _____ (2) Impede access to the door of a reproductive health care facility; or

14 _____ (3) Shout, or cause to be produced any amplified sound beyond the volume of a
15 conversational speaking voice, including use of a loudspeaker, bullhorn, or electronic audio instrument
16 or device that produces or reproduces amplified sound, on any public street or sidewalk within 50 feet
17 of the property line of a property housing a reproductive health care facility; provided, however, that
18 this subsection (a)(3)

19 **(b) Exemption. Section 4303(a) shall not apply to the following:**

20 _____ (A) Vehicles in compliance with or exempted from California Vehicle Code
21 section 27007;

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

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

1 — ~~(1) Individuals entering or exiting the reproductive health care facility. This exemption~~
2 ~~allows individuals to enter and pass through the buffer zone only while entering or exiting the~~
3 ~~reproductive health care facility, and does not permit those individuals to stop or remain in the buffer~~
4 ~~zone for any purpose, including but not limited to demonstration activity, or to engage in demonstration~~
5 ~~activity while entering or exiting the reproductive health care facility.~~

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

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

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

23 **(b)(e) Business Hours.** Section 4303(a) applies ~~only~~ during a reproductive health care
24 facility's posted business hours and up to one hour before the posted business hours.

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

11 ~~(d)(e)~~ **Other Laws.** Nothing in this Article shall preclude the enforcement of other state,
12 federal, or municipal laws inside or outside of the 25-foot boundary buffer zone, including but not
13 limited to those related to sidewalk obstruction, aggressive pursuit, or excessive noise.

14 **SEC. 4304. ENFORCEMENT.**

15 **(a) Criminal Enforcement.** Any person who violates Section 4303 of this Article shall
16 be guilty of a misdemeanor, and upon conviction thereof shall be punished by incarceration in
17 the County Jail, fine, or both. Upon a first conviction for violation of Section 4303, the person
18 shall be incarcerated in the County Jail for up to three months, or fined up to \$500, or both.
19 Upon a subsequent conviction for violation of Section 4303, the person shall be incarcerated
20 in the County Jail for up to six months, or fined up to \$1000, or both.

21 **(b) Civil Enforcement.** An aggrieved person may enforce the provisions of this Article
22 by means of a civil action. An aggrieved person includes any reproductive health care facility
23 ~~whose buffer zone is~~ that is the site of a violation of this Article. Any person who violates any of
24 the provisions of this Article or who aids in the violation of this Article shall be liable to the
25 aggrieved person for special and general damages, but in no case less than \$1000 plus

1 attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in
2 a proper case.

3 (c) **Dispersal Order.** A law enforcement official may order the immediate dispersal of a
4 gathering that continues to violate section 4303 after a written warning. A dispersal order issued
5 pursuant to this section shall include the following statements: (1) the gathering has substantially
6 impeded access to or departure from the reproductive health care facility; (2) each member of the
7 gathering shall, under the penalty of arrest and prosecution, immediately disperse and cease to stand
8 or be located within at least 25 feet of an entrance or a driveway to the reproductive health care
9 facility; and (3) the order shall remain in place for eight hours or until the close of business of the
10 reproductive health facility, whichever is earlier. This subsection (c) shall apply during the business
11 hours of a reproductive health care facility.

12 (e) (d) **Other Enforcement.** Nothing in this Article shall preclude any person from
13 seeking any other remedies, penalties or procedures provided by law.

14
15 **SEC. 4306. ARTICLE ACCOMMODATES COMPETING RIGHTS.**

16 In adopting this ~~legislation~~ Article, the Board of Supervisors recognizes both the
17 fundamental constitutional right to assemble peaceably and to demonstrate on matters of
18 public concern, as well as the right to seek and obtain health care. This legislation promotes
19 the full exercise of these rights and strikes an appropriate accommodation between them.

20 It is not the intention of the Board of Supervisors to interfere with the right to protest,
21 including the right to protest conditions of employment, ~~outside of the previously defined buffer~~
22 ~~zone~~. Rather it is the intention of the Board of Supervisors to impose reasonable time, place
23 and manner restrictions on all protests, to protect the right to seek and obtain health care. This
24 ~~ordinance~~ Article does not prohibit conduct by a party to a labor dispute in furtherance of labor
25 or management objectives in that dispute.

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Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

Section 3. 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:
DENNIS J. HERRERA, City Attorney

By: _____
ERIN BERNSTEIN
Deputy City Attorney

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