

ORDINANCE NO. 2004-027

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF MAY 25 2004

AN ORDINANCE ADDING CHAPTER 12.96 TO TITLE 12 OF THE SACRAMENTO CITY CODE, RELATING TO ACCESS TO HEALTH CARE FACILITIES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 12.96 (Sections 12.96.010 through 12.96.080) is added to Title 12 of the Sacramento City Code to read as follows:

CHAPTER 12.96. ACCESS TO HEALTH CARE FACILITIES

12.96.010 Findings.

The City Council finds that every person in the City of Sacramento has a basic and fundamental right to privacy protected by the United States Constitution and explicitly guaranteed in California's Constitution, Article 1, Section 1, including the right to seek and obtain all health care services permitted under the laws of this State. Central to this right is the need to secure access to all reproductive health care services. Access to these services is a matter of critical importance not only to the individual, but also to the health and welfare of all citizens of the City. Intentional efforts to harass an individual in order to deter or prevent the individual from exercising his or her right to seek and obtain health care services are contrary to the interests of the people of Sacramento.

The City Council finds that for many people seeking access to medical treatment, being forced to run a gauntlet of protestors who intend to deter or impede

- 1 -

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2004-027

ORDINANCE NO. _____

DATE ADOPTED: MAY 25 2004

access to the health care facility can be injurious to the patient's health, even if the patient is not physically barred from entry. Other persons may be sufficiently intimidated to put off necessary or timely medical treatment entirely. The City Council further finds that protests at the entrance to health care facilities in the City of Sacramento have often disrupted the operation of the facilities, as well as the ability of individuals to seek and obtain services within the facilities.

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

The City Council finds that the twenty-foot buffer zone outside of health care facilities established by this ordinance ensures that patients have unimpeded access to medical services without unduly impairing the ability of demonstrators to communicate their message to their intended audience. The buffer zone imposes content-neutral time, place and manner restrictions that are tailored to serve a significant government interest and that leave ample alternative channels of communication. It is based upon a determination made independently by the City Council as a result of evidence received and considered by the Council. A twenty-foot buffer zone has been determined to be reasonable by the Sacramento Superior Court based upon its review of similar facts and a determination that such a buffer protects those accessing clinics without unreasonably interfering with First Amendment protected communications.

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

This ordinance is supplemental to and not inconsistent with the federal Freedom of Access to Clinic Entrances Act and the California Freedom of Access to Clinic and Church Entrances Act, which Acts specifically provide that they are not intended to preempt local regulation of this matter.

12.96.020 Definitions.

A. For purposes of this chapter, the term "buffer zone" shall mean a sphere of

protection surrounding any entrance to a health care facility. The sphere is delineated by a twenty foot radius extending in all directions from the entrance to a health care facility.

- B. For purposes of this chapter, the term "entrance" shall mean any driveway, walkway, or parking area that abuts the public right-of-way and is designed to be used to gain access to any health care facility.
- C. For purposes of this chapter, the term "to harass" shall mean to intentionally approach another 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 in a buffer zone.
- D. For purposes of this chapter, the term "health care facility" shall mean any facility licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code, any health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any facility where medical care is regularly provided to individuals by persons licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act, or the Chiropractic Initiative Act, if the facility provides reproductive health care services.
- E. For purposes of this chapter, the term "reproductive health care services" refers to all medical, surgical, counseling and informational services related to the human reproductive system.
- F. For purposes of this chapter, the term "person" shall include, but is not limited to: 1) individuals; 2) corporations; 3) not-for-profit organizations; 4) partnerships; 5) associations; and 6) groups or entities. The term "person" shall not include an individual seeking access to, passage from, or services within a health care facility and his or her escorts.

12.96.030 Harassment of individuals seeking access to health care facilities prohibited.

It shall be unlawful for any person to harass, as defined in this chapter, or attempt to harass an individual entering, exiting, or seeking care inside a health care facility.

12.96.040 Enforcement.

A. Any person who violates Section 12.96.030 of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail, fine, or both. Upon a first conviction for violation of Section 12.96.030, the person shall be imprisoned in the county jail for up to three months, or fined up to \$500, or both. Upon a subsequent conviction for violation of Section 12.96.030, the person shall be imprisoned in the county jail for up to six months, or fined up to \$1,000, or both.

B. Nothing in this chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

12.96.050 Private right of action.

A. Any person who is seeking to or intends to seek access to a health care facility and is aggrieved by an act prohibited by Section 12.96.030 may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate or proposes to violate its provisions.

B. Any person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorney's fees and such other relief as determined by the court. In addition to all other damages, the court may award to the aggrieved person a civil penalty of up to one thousand dollars for each violation.

C. The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

12.96.060 Chapter accommodates competing rights.

In adopting this legislation, the City Council 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 legislation promotes the full exercise of these rights and strikes an appropriate accommodation between them.

It is not the intention of the City Council to interfere with the right to protest outside of the buffer zone. Rather it is the intention of the City Council to impose reasonable time, place and manner restrictions on all protests, to protect the right to seek and obtain health care.

12.96.070 Severability.

If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter, 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 chapter are severable.

DATE PASSED FOR PUBLICATION: **APR 29 2004**

DATE ENACTED: **MAY 25 2004**

DATE EFFECTIVE: **JUN 25 2004**

Deather Jorg
MAYOR

ATTEST:

D. Concolino
CITY CLERK

- 5 -

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