

Chapter 8.52 ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES

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8.52.010 Title and purpose.

This chapter shall be known as the "Access to Reproductive Health Care Facilities Ordinance." The City Council finds that every person in the City of Oakland 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 residents of the City of Oakland and the region. Intentional efforts to harass an individual or prevent that individual from exercising his or her right to seek and obtain reproductive health care services are therefore contrary to the interests of the people of Oakland.

This chapter is not intended to create any limited, designated, or general public fora. Rather it is intended to protect those who seek access to constitutionally protected reproductive health services from conduct which violates their rights.

(Ord. 12849 § 1, 2007)

8.52.020 Definitions.

A. "Reproductive health services" refers to all medical, surgical, counseling, referral, and informational services related to the termination of a pregnancy, whether such services are provided in a clinic, physician's office, or other facility other than a licensed hospital, but not if provided at a clinic or other facility owned and/or operated licensed hospital.

B. "Reproductive health care facility" refers to a facility licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety code or any other facility that provides reproductive health services that is not licensed as a hospital, and is not owned, and/or operated by a licensed hospital.

C. "Harassing" means the non-consensual and knowing approach within eight feet of another person or occupied motor vehicle for the purpose of passing a leaflet or handbill, to display a sign to, or engage in oral protest, education, or counseling with such other person in a public way or on a sidewalk area within one hundred (100) feet of the entrance of a reproductive health care facility.

D. "Interfering" means to restrict a person's freedom of movement or access to or egress from a reproductive health care facility providing reproductive health services.

E. "Counseling" means engaging in conversation with, displaying signs to, and/or distributing literature to individuals seeking access to, passage from, or services within the reproductive health care facility.

F. "Eight feet" shall be measured from any extension of the body of the individual seeking access to, passage from, or services within the reproductive health care facility, and/or the exterior of any occupied motor vehicle, to any extension of the body of, or any sign or object held by another person.

G. "Providing reproductive health services" shall include doctors, nurses, any employee of a reproductive health care facility and volunteers who, with the consent of the reproductive health care facility, assist in conducting patients of such facility safely into the facility.

(Ord. 12860 § 2, 2008: Ord. 12849 § 2, 2007)

8.52.030 Prohibited harassment of individuals seeking access to health care facilities.

A. It shall be unlawful to use force, threat of force, or physical obstruction to intentionally injure, harass, intimidate, or interfere with or attempt to injure, harass, intimidate, or interfere with any person because that person will be, is, or has been, providing or obtaining reproductive health services.

B. Within one hundred (100) feet of the entrance of a reproductive health care facility, it shall be unlawful to willfully and knowingly approach within eight feet of any person seeking to enter such a facility, or any occupied motor vehicle seeking entry, without the consent of such person or vehicle occupant, for the purpose of counseling, harassing, or interfering with such person or vehicle occupant.

C. Within one hundred (100) feet of the entrance of a reproductive health care facility, it shall be unlawful to willfully and knowingly approach within eight feet of any person seeking to enter such a facility, or any occupied motor vehicle seeking entry, for the purpose of injuring or intimidating such person or vehicle occupant in connection with seeking reproductive health services.

(Ord. 12860 § 3, 2008: Ord. 12849 § 3, 2007)

8.52.040 Enforcement.

A. Any person who shall be convicted of a violation of Section 8.52.030 above shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the County jail for not more than one year, or by a fine not to exceed two thousand dollars (\$2,000.00), or by both such fine and imprisonment.

B. Civil Remedies:

1. Any person providing, seeking to provide, or seeking reproductive health services who is aggrieved by conduct prohibited by this chapter may commence a civil action in the Courts of the State of California.

2. In any action commenced under subsection A of this section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive relief and compensatory and exemplary damages and reasonable fees for attorneys and expert

witnesses. With respect to damages, at any time before final judgment, plaintiff may elect to recover, in lieu of compensatory damages, an award of statutory damages in the amount of five thousand dollars (\$5,000.00) per violation.

(Ord. 12849 § 4, 2007)

8.52.050 Accommodation of competing rights.

In adopting this legislation, the Oakland City Council recognizes both the fundamental constitutional right to assemble peacefully 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.

Nothing in this chapter shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the United States Constitution, the California Constitution or any federal or California statute.

(Ord. 12849 § 5, 2007)

8.52.060 Severability.

If any part, provision, or clause of this chapter or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, all other provisions and clauses hereof, including the application of such provisions and clauses 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.

(Ord. 12849 § 6, 2007)