

**CITY OF SAN MATEO  
ORDINANCE NO. 2022-6**

**Adopt Title 10 “Peace, Safety and Morals” Chapter 10.90 “Access to Reproductive Health Care Facilities” of  
the San Mateo Municipal Code to Prohibit Individuals from Harassing, Intimidating, or Obstructing Persons  
Seeking Access to a Reproductive Health Care Facility**

THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

**Section 1. Findings.**

(a) Every person in the City of San Mateo ("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.

(b) The City Council desires to amend Title 10 entitled “Peace, Safety and Morals” of the City’s Municipal Code by adding Chapter 10.90 in its entirety, entitled “Access to Reproductive Health Care Facilities.” The adoption of Municipal Code Title 10, Chapter 10.90 through this Ordinance is essential and necessary to promote the full exercise of the right to privacy by patients seeking vital reproductive health services and is also necessary to maintain public health, safety, and welfare within the City.

(c) In developing this Ordinance, the City Council is mindful of the legal principles relating to regulation of activity in public forums such as sidewalks, streets and public parks. The City Council does not intend to unconstitutionally suppress or infringe expressive activities protected by the First Amendment of the United States Constitution or the Liberty of Speech Clause of the California Constitution, but instead is enacting reasonable content-neutral time, place and manner regulations. These regulations address the need to prevent: harassment and intimidation within eight (8) feet of a person accessing reproductive health care facilities within 100 feet of the entrance to a reproductive health care facility; and the obstruction of access to a reproductive health care facility.

(d) The City Council in enacting this Ordinance does hereby take legislative notice of the various principles and decisions regarding buffer zone restrictions at reproductive health care facilities, First Amendment rights and the regulation of public assemblies, including but not limited to, the following: *Hill v. Colorado* (2000) 530 U.S. 703; *McCullen v. Coakley* (2014) 573 U.S. 464; *Schenck v. Pro-Choice Network of W. New York* (1997) 519 U.S. 357; *Reed v. Town of Gilbert, Ariz.* (2015) 576 U.S. 155; *Hoye v. City of Oakland* (9<sup>th</sup> Cir. 2011) 653 F.3d 835; *United States v. Grace* (1983) 461 U.S. 171; *Police Dep’t of Chicago v. Mosley* (1972) 408 U.S. 92, 95; and *Madsen v. Women’s Health Ctr., Inc.* (1994) 512 U.S. 753.

(e) The City Council also takes legislative notice of the State of Colorado regulation prohibiting efforts to obstruct, detain, hinder, impede, or block another person’s entry to or exit from a health care facility, as well as knowingly approach within eight feet of a person, unless such person consents, for the purpose of engaging in specified conduct within one hundred feet of the entrance to a health care facility, validated by the Supreme Court in *Hill v. Colorado* (2000) 530 U.S. 703. The City Council also takes legislative notice of the City of Oakland regulation prohibiting efforts to knowingly and willfully approach within eight feet of a person or vehicle occupant seeking entry to a reproductive health clinic if the purpose is to counsel, harass, or interfere with such person or vehicle occupant, validated by the Ninth Circuit in *Hoye v. City of Oakland* (9<sup>th</sup> Cir. 2011) 653 F.3d 835.

The City Council also takes legislative notice of the ordinances protecting the constitutional right to access reproductive health care facilities enacted by the City of San Francisco and the City of Napa that prohibit following or harassing conduct within 25 feet and 30 feet of a reproductive health care facility, respectively, and prohibit impeding access to or exit from a reproductive health care facility. The City Council also takes legislative notice of the City of Walnut Creek ordinance prohibiting efforts to willfully and knowingly approach within eight feet of a person or vehicle occupant seeking entry to reproductive health care facility, within 100 feet of the entrance, if the purpose is to harass or intimidate such person or vehicle occupant, and prohibiting the obstruction of access to or departure from the facility.

(f) The function of a buffer zone restriction at a reproductive health care facility is to prohibit specific conduct which may obstruct, deter, delay, or prevent individuals from obtaining or providing necessary reproductive health care services because they are otherwise forced to endure harassing, obstructive or intimidating behavior. These factors lead to increased patient stress that may affect the efficacy and complication rate of the medical care sought within and can adversely affect the physical and emotional health and well-being of patients seeking services at a reproductive health care facility.

(g) The City finds that continued incidences and harassment on and in front of the Planned Parenthood property in San Mateo raise serious and alarming safety concerns regarding the constitutionally protected right to access reproductive health care facilities. The City's Police Department has received several calls for service since 2014 about protest-related incidents, including but not limited to: a report of a woman jumping in front of a moving vehicle to prevent a patient from entering the parking lot; a report of protestors blocking the driveway leading into the clinic, thereby obstructing vehicular traffic on Baywood Avenue; a report of a person dressed in a white doctor-style coat in front of the facility and aggressively engaging with people entering the facility; a report of a protestor grabbing the arm of a person who was escorting a patient from the parking lot into the facility; a report of a person wearing a white lab coat and a stethoscope who flagged down a patient entering the facility claiming that they were a doctor with Planned Parenthood; and a report of a car blocking the driveway of the facility parking lot due to a protestor yelling at the driver, who was as a result blocking a third party from walking down the sidewalk.

(h) On May 16, 2022, members of the public spoke at the City Council meeting when this ordinance was introduced and described their experience with protestors in front of Planned Parenthood, which included regularly encountering a person in a lab coat trying to block the facility driveway, and observing protestors standing on stools on the sidewalk screaming at people entering the facility. Written comments included observations of said protestors holding signs in front of vehicles attempting to pull into the facility parking lot.

(i) The City has determined that delaying action on further consideration of this Ordinance until additional incidences and harassment in front of Planned Parenthood occur or escalate does not adequately protect the constitutional rights of these individuals to access reproductive health care services, and that it is instead appropriate to enact basic protections against harassment, intimidation and obstruction in regards to accessing reproductive health care facilities.

(j) The City desires to enact narrowly-tailored content neutral regulations to protect the right to access reproductive health care services by enacting restrictions on conduct that obstructs access to reproductive

health care services by creating an eight-foot buffer for a person accessing the facility when the person is within 100 feet of the entrance to the reproductive health care facility.

(k) By enacting this Ordinance, the City Council does not intend to interfere with the exercise of free speech rights of those engaged in protesting outside of reproductive health care facilities. Rather, this Chapter only regulates harassment and intimidation within eight feet of the person within 100 feet of the entrance to a reproductive health care facility, and obstructing access, to protect both the rights of those seeking access to reproductive health care services, and those who gather outside of reproductive health care facilities in the City to speak on matters of public concern. The City has determined based on empirical evidence, including ordinances adopted by sister jurisdictions, that creating an eight-foot buffer around a person when that person is within 100 feet of the entrance to a health care facility minimizes, reduces and/or eliminates harassing, intimidating and/or obstructing conduct while at the same time still allowing any protected expressive activity to occur in close enough proximity to reach the intended audience.

(l) The City finds that the modest scope of the Ordinance prohibiting harassing and intimidating individuals within eight feet of the person, within 100 feet of the entrance to a reproductive health care facility, and obstructing access, are content-neutral and are narrowly-tailored restrictions that serve a significant governmental interest, but still provide alternative avenues of communication. The reasonable time, place and manner restrictions in this Ordinance avoid the negative effects of harassing, intimidating and obstructive conduct around reproductive health care facilities, without targeting the message or topic of speech. The restrictions are narrowly tailored and allow ample alternative means of communicating in the areas in front of reproductive health care facilities through consensual conversations that are not harassing or intimidating or through non-consensual conversations where there is an eight-foot distance between speaker and target audience to reduce or eliminate the harassing, intimidating or obstructing conduct accompanying any such speech. The application of this Ordinance to apply only to reproductive health care facilities, rather than health care facilities generally, further ensures narrow tailoring because 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.

(m) This Ordinance 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.

**Section 2.** Chapter 10.90 of the San Mateo Municipal Code is added to Title 10 as follows:

**Chapter 10.90**  
**Access to Reproductive Health Care Facilities Ordinance**

**10.90.010 Title and Purpose**

(a) 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 San Mateo 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 the State of California. 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 San Mateo 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 San Mateo.

(b) In adopting this Ordinance, the San Mateo 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 services. This Ordinance promotes the full exercise of these rights and strikes an appropriate accommodation between them.

(c) This Ordinance 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 while also protecting the rights of people who gather outside of reproductive health care facilities in the City to speak on matters of public concern.

#### 10.90.020 Definitions

(a) "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.

(b) "Entrance" means a walkway leading to the front door of a reproductive health care facility.

(c) "Follow" means to physically pursue an individual once that individual has indicated verbally or non-verbally they do not wish to be approached or engage in conversation.

(d) "Gathering" means two or more individuals.

(e) "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. Harass includes, but is not limited to:

(1) Approaching a person once that person has indicated they do not want to be approached or engage in conversation, except as necessary to enter or exit the reproductive health care facility;

(2) 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;

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

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

(f) "Intimidate" means making a true threat directed to a person or group of persons with the intent of placing that person or group of persons in fear of bodily harm or death.

(g) "Obstruct" means rendering ingress to or egress from a reproductive health care facility providing reproductive health services, or rendering passage to or from a reproductive health care facility, unreasonably difficult or hazardous. Obstruct includes, but is not limited to intentionally blocking or interfering with the safe or free passage of a pedestrian or occupied vehicle by any means, such as (1) intentionally causing a pedestrian to take evasive action to avoid physical contact, or (2) placing signs, tables, or chairs on the sidewalk such that the flow of pedestrian traffic is restricted or obstructed.

(h) "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, exclusively or in addition to other health services. Reproductive health care facility does not include a licensed hospital or a clinic or other facility owned or operated by a licensed hospital.

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

(j) "True threat" means a statement in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group of persons regardless of whether the person actually intends to act on the threat.

#### **10.90.030 Interference with Access to Reproductive Health Care Facilities Prohibited**

(a) The following is prohibited:

(1) 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 (8) feet of any person seeking to enter or exit the reproductive health care facility, or any occupied motor vehicle seeking to enter or exit the parking lot of such a facility, without the consent of such a person or vehicle occupant, for the purpose of harassing or intimidating such person or vehicle occupant.

(2) Obstruct access to or departure from any entrance to a building or driveway of a reproductive health care facility; or

(3) Fail to comply with a dispersal order as described in Section 10.90.040(C).

(b) Section 10.90.030(A) applies during, one hour before, and one hour after, a reproductive health care facility's posted business hours.

(c) Nothing in this Chapter shall preclude the enforcement of other state, federal, or municipal laws, including but not limited to those related to sidewalk and street obstructions, or prohibited noises.

#### 10.90.040 Enforcement

(a) Criminal Enforcement. Any person who violates Section 10.90.030(A) shall be deemed guilty of a misdemeanor. Upon a first conviction for violation of Section 10.90.030(A), the person shall be incarcerated for up to ninety days, or fined up to \$500, or both. Upon a subsequent conviction for violation of Section 10.90.030(A), the person shall be incarcerated for up to one-hundred-eighty days, or fined up to \$1000, or both.

(b) Civil Enforcement. An aggrieved person may enforce the provisions of this chapter by means of a civil action in the Courts of the State of California. An aggrieved person includes any reproductive health care facility that is the site of a violation of this Chapter. Any person who violates any of the provisions of this Chapter shall be liable to the aggrieved person for special and general damages, but in no case less than \$1000, attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.

(c) Dispersal Order. A law enforcement official may order the immediate dispersal of a gathering that continues to violate Section 10.90.030(A) after a verbal warning. A verbal dispersal order issued pursuant to this subsection (C) shall include the following statements: (1) the gathering has substantially violated Section 10.90.030(A) by harassing, intimidating or obstructing access to or departure from the reproductive health care facility; and (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 100 feet of an entrance to the reproductive health care facility. If the dispersal order is written and posted at the location of the reproductive health care facility, the order shall remain in effect until one hour after the close of business of the reproductive health care facility. This subsection (C) shall apply during, one hour before, and one hour after, the posted business hours of a reproductive health care facility.

(d) Nothing in this Chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

**Section 3. Environmental Determination.** In accordance with California Environmental Quality Act (CEQA) Guidelines, section 15061(b)(3), adoption of this Ordinance amendments is covered by the "common sense exemption" that CEQA applies only to projects which have the potential to cause a significant effect on the environment. Here, it can be seen with certainty that the Ordinance, which is designed for the protection of access to reproductive health care facilities, will not have a significant effect on the environment under CEQA Guidelines Section 15061(b)(3).

**Section 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

**Section 5. Publication.** This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

**Section 6. Legislative History and Effective Date.** This ordinance was introduced on May 16, 2022, and adopted on June 6, 2022, and shall be effective 30 days after its adoption.

The foregoing ordinance was adopted by the City Council of the City of San Mateo, State of California by the following vote:

AYES: Council Members Bonilla, Papan, Rodriguez and Lee

NOES: None

ABSENT: Goethals

ATTEST:



Patrice M. Olds, City Clerk

*Rick Bonilla*

Rick Bonilla, Mayor