

ORDINANCE O2021-____

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA
MUNICIPAL CODE TO ADD A NEW CHAPTER 12.72
“ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES”

WHEREAS, the City has authority to regulate the use of City sidewalks and rights of way in order to protect the public health, safety, and welfare pursuant to California Constitution Article XI, Sections 5 and 7, and City Charter Section 4; and

WHEREAS, every person in the City has a fundamental right to privacy that is protected by the United States Constitution, and is explicitly guaranteed in California Constitution Article I, Section 1. This right to privacy includes the right to access all legal health care services, including reproductive health care services; and maintaining access to reproductive health care services is a matter of critical importance not only to individuals, but also to the health, safety, and welfare of all residents of the City; and

WHEREAS, efforts to approach, obstruct, or otherwise interfere with individuals seeking reproductive health care services may deter, delay, and even prevent individuals from obtaining necessary reproductive health care services. These efforts, which often include forcing patients to face demonstrators near the entrances, exits, and driveways of reproductive health care facilities, or to confront potentially intimidating demonstrators stationed at or near those entrances, exits, and driveways, also disrupt the ability of staff at reproductive health care facilities to devote their full efforts to providing health care services and divert valuable facility resources away from patients. Pedestrians, including patients and employees seeking to receive or provide health care, are blocked or slowed on sidewalks adjacent to reproductive health care facilities by individuals gathering and obstructions place in the public right of way, and patients in facility waiting rooms are subjected to demonstrations outside the door. These factors, including difficulty entering and exiting the facility as well as noise once inside the facility, can lead to increased patient stress that may affect the efficacy and complication rate of the medical care sought within. Actions that result in such obstruction, delay, and deterrence of patients, and diversion of reproductive health care facilities' staff and resources, undermine the City's interest in maintaining the public health, safety, and welfare, and in preserving its residents' constitutional right to privacy; and

WHEREAS, the City acknowledges and respects the fundamental right of free speech and assembly for members of the public to gather and speak using traditional public fora, such as City sidewalks, under the First Amendment to the United States Constitution, including the right to engage in sidewalk counseling near reproductive health care facilities; and, the City intends to regulate conduct in a manner that is narrowly tailored to serve the significant governmental interest of protecting against infringements on the right of privacy (through fear of physical harm, harassment, or delay, as

ATTACHMENT 1

summarized in these recitals) without infringing on free speech rights, and leaving open ample alternative channels for communication (as articulated by the United States Supreme Court in Hill v. Colorado (2000) 530 U.S. 703; and McCullen v. Coakley (2014) 573 U.S. 464); and

WHEREAS, the City Council hereby finds that this ordinance is necessary to promote the full exercise of the right to privacy by patients seeking vital reproductive health care services and is also necessary to maintain public health, safety, and welfare within the City. The City Council further finds that this ordinance strikes a lawful and appropriate accommodation between the right to privacy and to access reproductive health care services and the needs of public health, safety, and welfare, on the one hand; and the rights of free speech and assembly, on the other; and

WHEREAS, this ordinance applies only to reproductive health care facilities, not health care facilities generally. In addition, this ordinance does not apply to licensed hospitals or to reproductive health care facilities owned or operated by licensed hospitals. This scope ensures the ordinance is narrowly tailored to address the significant governmental interests it serves and leaves other health care facilities and locations available for speech. Individuals attempting to access reproductive health care facilities to obtain reproductive health care services have been subjected to harassing or intimidating activity from extremely close proximity, tending to hamper, delay or deter their access to those facilities and services and thus subverting their legal rights to seek and obtain legal health care services. The Council finds that 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. Further, reproductive health care facilities not affiliated with hospitals commonly possess fewer resources for providing adequate security and safety to individuals seeking access to reproductive health care services. Thus, this ordinance provides narrowly tailored, content-neutral restrictions where they are most necessary to further the significant government interests this ordinance serves; and

WHEREAS, the City is aware of one "reproductive health care facility" (as defined by the proposed ordinance) which is located at 1735 Jefferson Street, in Napa; and

WHEREAS, the City of Napa Police Department has responded to numerous calls for service at this location for over a decade with over 90 calls in the last five years, including harassing activities that could be regulated by this proposed ordinance such as blocking of sidewalks, impeding movement of others, verbal harassment and threats, and intimidation; and

WHEREAS, the Council finds that the modest scope of the prohibition on following and harassing individuals, impeding access, and making excessive noise in close proximity to reproductive health care facilities is necessary to ensure that patients may

gain safe and unimpeded access to reproductive health care services, while allowing speakers to effectively communicate their messages to their intended audience. This prohibition applies equally to all, regardless of the content of their speech; and

WHEREAS, the Council further finds that intimidating behavior, including excessively loud demonstration activity, as well as following and harassing patients, staff, and other individuals around the entrances, exits and driveways of reproductive health care facilities can impede pedestrian and vehicle traffic and create safety hazards on the sidewalks and roadways, and that the limitations this ordinance imposes on aggressive and intimidating behavior will help promote safe and effective pedestrian and vehicle traffic flow around reproductive health care facilities; and

WHEREAS, the Council further finds that loud, harassing, and intimidating activities – independent of the content of those activities – conducted around the entrances, exits and driveways of reproductive health care facilities can adversely affect the physical and emotional health and well-being of patients seeking services at a reproductive health care facility. Noise control is particularly important around medical facilities during surgery and recovery periods. Noise produced by protesters that can be heard within a clinic, may cause stress in the patients; this includes loud, disruptive noise heard during patient intake, surgical procedures and while recuperating in the recovery rooms. The Council finds that this ordinance will provide a protective space for patients and thereby help avoid those adverse health consequences; and

WHEREAS, the Council finds that this ordinance imposes content-neutral time, place, and manner restrictions on speech and assembly, which are narrowly tailored to serve significant government interests described herein and leave ample alternative channels of communication; and

WHEREAS, 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; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

SECTION 1: Adoption. Napa Municipal Code Chapter 12.72 is hereby adopted as set forth in Exhibit “A,” attached hereto and incorporated herein by reference. Accordingly, the Table of Contents for Napa Municipal Code Title 12 is hereby amended to add the reference to Chapter 12.72 “Access to Reproductive Health Care Facilities.”

ATTACHMENT 1

SECTION 2: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }
COUNTY OF NAPA } SS:
CITY OF NAPA }

I, Tiffany Carranza, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the 6th day of April, 2021, and had its second reading and was adopted and passed during the public meeting of the City Council on the 20th day of April, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____

Tiffany Carranza
City Clerk

Approved as to Form:

Michael W. Barrett
City Attorney