

EXHIBIT “A”

CHAPTER 12.72

ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES

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Section 12.72.010 Purpose.

- A. The City recognizes both the fundamental constitutional right to assemble peaceably and to speak or demonstrate on matters of public concern, as well as the right to seek and obtain health care. This chapter promotes the full exercise of these rights and strikes an appropriate accommodation between them.
- B. The purpose of this chapter is to serve the significant governmental interest of protecting the right of access to reproductive health care facilities in a manner that is narrowly tailored to serve that interest and that leaves open ample alternative channels for communication. The City acknowledges and respects the fundamental right of free speech and assembly for members of the public to gather and speak on City sidewalks; however, through this chapter, the City exercises its authority to impose reasonable restrictions on the time, place, and manner of that speech.

Section 12.72.020 Definitions.

For purposes of this Chapter:

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

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

"Gathering" means two or more individuals.

"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. Harassment includes, but is not limited to:

1. Approaching within eight feet of a person if that person indicates he or she does not want to be approached, 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;

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3. Shouting at a person within 30 feet of the entrance of a reproductive health care facility;
4. Intentionally touching or causing physical contact with a person without that person's consent;
5. Intentionally blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including, but not limited to (a) intentionally causing a pedestrian to take evasive action to avoid physical contact and/or (b) placing or holding any physical object on the sidewalk such that the flow of pedestrian traffic or loading or unloading of vehicles is restricted. [This subsection (5) shall not prohibit individuals from holding or wearing a sign that is in compliance with Chapter 17.55 (including a handheld noncommercial sign) while using the sidewalk]; or
6. Using violent or threatening gestures toward a person.

"Impede" means to obstruct, block, detain, or render passage impossible, unsafe, or difficult.

"Law Enforcement Official" means a member of a law enforcement agency, including but not limited to a member of a municipal or state police department, or a sheriff's office.

"Person" shall have the meaning set forth in Section 1.04.030.

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

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

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

"Shout" refers to any audible activity not electronically amplified originating from an individual that is beyond that of a conversational speaking voice, including vocalizations that are audible from more than 30 feet away, as well as vocalizations intended to carry from the street or public sidewalk to the inside of a reproductive health care facility.

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Section 12.72.030 Interference with Access to Reproductive Health Care Facilities Prohibited.

- A. Prohibition. It shall be unlawful to:
1. Follow or harass any person within 30 feet of any entrance of a building containing a reproductive health care facility; provided, however, that subsection (A)(1) shall not apply unless the City has conspicuously posted a sign providing notice of the boundary zone near the 30-foot boundary. A reproductive health care facility that wants its 30-foot boundary marked and a notice posted shall submit a written request to the Police Chief. The City shall measure and post signs identifying the 30-foot boundary within 14 days of the request;
 2. Impede access to or departure from any entrance to a building containing a reproductive health care facility; or
 3. Shout, or cause to be produced any amplified sound beyond the volume of a conversational speaking voice, including use of a loudspeaker, bullhorn, or electronic audio instrument or device that produces or reproduces amplified sound, on any public street or sidewalk within 50 feet of the property line of a property housing a reproductive health care facility; provided, however, that this subsection (a)(3) shall not apply to the following:
 - a. Vehicles in compliance with or exempted from California Vehicle Code section 27007;
 - b. Use of a car horn or other warning device as permitted by California Vehicle Code sections 27000 to 27006; and
 - c. Law enforcement or public safety officials acting in the scope of their employment, to the extent necessary to attend to public health/safety issues.
 4. Fail to comply with a dispersal order as described in Section 12.72.040(C).
- B. Business Hours. Section 12.72.030(A) applies during a reproductive health care facility's posted business hours and up to one hour before, and one hour after, the posted business hours.
- C. Other Laws. Nothing in this Chapter shall preclude the enforcement of other state, federal, or municipal laws inside or outside of the 30-foot boundary, including but not limited to those related to sidewalk obstruction, aggressive pursuit, or excessive noise.

Section 12.72.040 Enforcement.

- A. **Criminal Enforcement.** Any person who violates Section 12.72.030 shall be guilty of a misdemeanor, subject to enforcement in accordance with Chapter 1.20. Upon

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a first conviction for violation of Section 12.72.030, the person shall be incarcerated for up to three months, or fined up to \$500, or both. Upon a subsequent conviction for violation of Section 12.72.030, the person shall be incarcerated for up to six months, 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. 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 or who aids in the violation of this chapter shall be liable to the aggrieved person for special and general damages, but in no case less than \$1000 plus 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 12.72.030 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 12.72.030 by harassing, following and/or impeding 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 30 feet of an entrance to the reproductive health care facility. If the dispersal order is written and posted at the locations identified in Section 12.72.030(A)(1), the order shall remain in effect until one hour after the close of business of the reproductive health facility. This subsection (C) shall apply during the business hours of a reproductive health care facility and up to one hour before, and one hour after, the posted business hours.
- D. **Other Enforcement.** Any violation of this chapter is subject to enforcement in accordance with Chapter 1.16. Nothing in this chapter shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

Section 12.72.050 City Undertaking Limited to Promotion of General Welfare.

Consistent with Section 1.04.150, in undertaking the adoption and enforcement of this chapter, the City is undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.