



## Staff Reports

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**File #:** 400-2020, **Version:** 1

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**To:** Honorable Mayor and Members of City Council

**From:** Steve Potter, City Manager

**Prepared By:** Liz Habkirk, Deputy City Manager

**TITLE:**

Access to Reproductive Health Care Facilities

**RECOMMENDED ACTION:**

Approve the first reading and introduction of an ordinance amending the Napa Municipal Code to add a new Chapter 12.72, "Access to Reproductive Health Care Facilities."

**DISCUSSION:**

During the City Council meeting on August 18, 2020, Council received a presentation from the Police Chief (former Chief Robert Plummer) on issues related to the regulation of protests on sidewalks near reproductive health care facilities. The Chief provided information on existing local ordinances that regulate general issues related to the use of sidewalks, as well as California Penal Code sections that regulate interfering or intimidating conduct near reproductive health care facilities. Following that discussion, Council directed staff to prepare an ordinance that will more particularly address ongoing concerns that have been identified in the City of Napa.

The issue of safe access to reproductive health care facilities is one that has been discussed and regulated by many jurisdictions across the country. In Napa, the Police Department has been the City's primary point of contact for interactions occurring near the reproductive health care facility at 1735 Jefferson Street (Planned Parenthood). Police Department representatives have regularly communicated with Planned Parenthood management, as well as organizers of community groups of protestors and others who congregate on the sidewalk in front of planned parenthood, with the goal of providing for City sidewalks that are safe for public use. In the last five years, the Police Department has received approximately 90 calls for service at the location, mainly related to issues such as blocking of the sidewalk to pedestrians and those seeking to enter the facility, impeding the movement of others, verbal harassment and threats, and intimidation. There have also been calls for services from protestors regarding harassing interactions and threats they have received.

The City has attempted to reduce the frequency of these situations from occurring in various ways, but primarily through open and regular communication between stakeholders and Police Department representatives. Current regulations are reviewed at the beginning of major bi-annual campaigns known as "Forty Days for Life" and officers are provided with annual training on appropriate response procedures. Additionally, the City has provided evaluations of the property for Planned Parenthood recommending environmental safety improvements. However, the issues of unimpeded access and other types of service calls persist.

At the August 2020 Council meeting, the City Council received numerous written and phoned comments from proponents on more stringent regulations protecting access to the Planned Parenthood facility, as well as those concerned with the ability of individuals to exercise their constitutional right to express themselves on public sidewalks. Following discussion, the Council directed staff to return with a recommended ordinance that would create a “Buffer Zone” around reproductive health care facilities in Napa to allow for safe and unimpeded access to these facilities while also providing for the fundamental constitutional right to assemble peaceably and to speak or demonstrate on matters of public concern.

As discussed at the Council’s previous meeting, the City has constitutional authority to establish and enforce ordinances that regulate conduct in order to provide for the public health, safety, and welfare. However, the City’s authority is limited by the competing constitutionally protected rights of individuals to use public sidewalks to exercise their right of free expression. The U.S. Supreme Court has balanced these two competing sets of rights and concluded that a city may impose reasonable restrictions on the time, place and manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

The recommended ordinance complies with the legal criteria established by the U.S. Supreme Court. The ordinance seeks to address the significant governmental interests of providing safe patient access to healthcare and unobstructed use of sidewalks by the general public. Due to the history of complaints related to harassing and obstructive conduct on a sidewalk near a reproductive health care facility, the ordinance is focused on regulating that conduct at the location where the problematic conduct has occurred, within a 30-foot “buffer zone” around the entrance of any reproductive health care facility. The ordinance is not based on the content of any speech, but it does regulate the time, place, and manner of speech by prohibiting amplified sound and shouting within the buffer zone during the time between one hour before and one hour after posted business hours of a reproductive health care facility. The ordinance leaves open ample channels for communication of information outside of the 30-foot buffer zone; and, within the buffer zone, speech is not prohibited as long as it does not “harass” (as defined in the ordinance) and is not shouted or amplified.

The proposed ordinance establishes the definition of harassment and provides illustrative examples of behavior that would be in violation of the code, such as approaching a person within eight feet if that person has indicated in any way that he or she does not want to be approached. Given the nature of the calls for police response at the location, these narrowly tailored restrictions are intended to resolve many of those repeated issues. The establishment of this ordinance does not preclude enforcement of any other state or federal regulations, either inside or outside the 30-foot boundary, including those related to excessive pursuit and sidewalk obstruction.

The ordinance establishes enforcement criteria to include criminal and civil enforcement avenues for violations. It also provides law enforcement officials with the power to order the immediate dispersal of a gathering that continues to violate the section after a verbal warning.

Finally, the ordinance requires a request by the reproductive health care facility to the Police Department to establish the boundary by the posting of signage with clear reference to the municipal code.

Today's recommended action will approve the first reading and introduction of the ordinance. Staff would return with a second reading at the City Council's next regularly scheduled meeting on April 20, 2021. The new chapter would then become effective 30-days from that date, on May 5, 2021.

**FINANCIAL IMPACTS:**

The City may incur minor costs associated with posting of signage at the location upon request of the reproductive health care facility to establish a boundary.

**CEQA:**

The City Manager has determined that the Recommended Action described in this Agenda Report is not subject to CEQA, pursuant to CEQA Guidelines Section 15060 (c).

**DOCUMENTS ATTACHED:**

ATCH 1 - Ordinance

EX A - Chapter 12.72 - Access to Reproductive Health Care Facilities

**NOTIFICATION:**

Legal notices of report were published in the Napa Valley Register at least 10 days prior to the hearing date.