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CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

CITY COUNCIL

TEL (510) 238-3266
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October 23, 2007

Public Safety Committee
Oakland City Council
Oakland, California

RE : **An Ordinance Amending Title 8 Of The City Of Oakland Municipal Code By Adding A New Chapter, 8.50, Entitled "Access To Reproductive Health Care Facilities," And New Sections 8.50.010 Through _____, To Protect Access To Reproductive Health Care Facilities And Creating A Private Right Of Action For Violations Of This Chapter**

Dear Chairperson Reid and Members of the Public Safety Committee:

In response to recurring conflicts and confrontational protests in front of women's reproductive health facilities in Oakland, this report recommends that the City Council adopt an ordinance establishing limited medical safety zones around reproductive health care facilities, including those that provide abortion care.

To protect the safety and privacy of patients and their family members, clinic escorts, doctors, nurses, and any employee of a reproductive health care facility, this ordinance will:

- Ensure safe and unimpeded access to reproductive health care facilities.
- Prohibit the use of force, threat of force, or physical obstruction to intentionally injure, harass, intimidate, or interfere with any person providing or obtaining reproductive health services.
- Within 100 feet of the entrance, will prohibit approaching within eight feet any person or motor vehicle seeking to enter the facility, without the consent of the person or vehicle occupant, for the purpose of interfering, harassing, injuring, or intimidating the person or vehicle occupant.
- Provide penalties of imprisonment in the county jail for up to one year and/or a fine of \$2,000.
- Recognize the fundamental constitutional right to assemble peacefully and to demonstrate on matters of public concern, including labor disputes.

Item: _____
Public Safety Committee
October 23, 2007

BACKGROUND

Nationwide, 59% of abortion clinics surveyed experienced protestors who employed intimidation tactics such as noise disturbances, approaching and blocking cars, taking photo/video of patients, and recording of license plates.¹ In California, more than half of the 172 abortion providers surveyed by the California Senate Office of Research experienced anti-reproductive-rights crimes at their clinics or offices between 1995 and 2000. The most common crimes reported in the survey were threats of violence, vandalism, non-injury assaults, and blockades.²

In November 2006, 77% of Oakland voters supported a woman's right to Choice by opposing Proposition 85³, an anti-abortion State initiative. This overwhelming rejection of Prop. 85 shows that the people of Oakland strongly support safe access to abortion services, without barriers or restrictions. To date, the following organizations have submitted endorsements in support of the proposed Ordinance (endorsements from individual Oakland residents are included as *Attachment A*):

- ACCESS/Women's Health Rights Coalition
- Alameda County Commission on the Status of Women
- American Association of University of Women, Oakland-Piedmont Branch
- Association of Reproductive Health Professionals (ARHP)
- Berkeley National Organization for Women
- Copyfox, Inc.
- Family Planning Specialists Medical Group
- League of Women Voters of Oakland
- NARAL ProChoice California
- National Women's Political Caucus – Alameda North
- National Women's Political Caucus of California
- Oakland East Bay National Organization for Women
- Physicians for Reproductive Choice and Health (PRCH)
- Planned Parenthood Golden Gate
- Renaissance Stone
- Snyder Title Company
- West Coast Feminist Health Project/Women's Choice Clinic
- Women of Temple Sinai (WTS)

KEY ISSUES AND IMPACTS

Currently in Oakland, the intimidation and harassment of women attempting to access reproductive health services is a frequent and recurring problem. The aggressive nature of the harassment and intimidation has noticeably escalated, threatening the public safety of clinic patients, staff, and volunteer escorts by increasing the potential for physical violence.

¹ 2005 *National Clinic Violence Survey*, Conducted by Feminist Majority Foundation, p. 3 (Released May 2006), at http://www.feminist.org/research/cvsurveys/clinic_survey2005.pdf.

² *Crimes Against Reproductive Rights in California*, California Senate Office of Research, prepared by Gregory deGiere (May 2001; revised January 2002), at http://www.sen.ca.gov/sor/reports/reports_by_year/2001/Reprocrimes.htm.

³ Proposition 85 ("Waiting Period and Parental Notification Before Termination of Minor's Pregnancy"), if passed, would have put California's most vulnerable teens at risk, by requiring parental notification for abortion services. The text of Proposition 85 is available at <http://www.smartvoter.org/2006/11/07/ca/state/prop/85/>.

In Alameda County, five clinics provide abortion services – four of the five clinics are located in Oakland; there is a clinic in Downtown Oakland, one in West Oakland, another in North Oakland, and one in East Oakland. The clinic in East Oakland is on private property and thus does not experience harassment and intimidation. At the other three clinics, 50 volunteer clinic escorts work three-hour shifts in teams of four to escort clients who would otherwise be harassed, intimidated, or even blocked from entering the clinics.

Clients and clinic staff at three of the Oakland clinics experience harassment and intimidation at least two to three times weekly. Demonstrators attempt to prevent women from obtaining reproductive health services, including abortion services, with tactics that range from verbal abuse to physically blocking access to the clinic. The effect of this type of confrontation is emotionally and psychologically traumatic, and can cause physical distress to clinic visitors.

Some examples of the harassment and intimidation experienced by clients, volunteer escorts, and staff at the Oakland clinics (information taken from clinic escort logs, patient statements, and volunteers) include:

- A demonstrator regularly pursuing clients down the street and around the corner. When reported to OPD, officers maintained the street was public property and they couldn't do anything unless the client called the police.
- Clinic escorts and staff frequently being pushed against vehicles, and otherwise being grabbed or physically assaulted.
- Individual demonstrators disobeying stay-away orders, and continuing to harass clinic employees and escorts.
- Demonstrators repeatedly blocking clinic entrances, harassing patients and family members, stopping cars attempting to enter the clinic parking lot, and pushing anti-choice literature (including graphic medical photos and *inaccurate* medical information) inside cars after people said they did not want them.
- Protestors videotaping or taking photos of patients as they try to enter clinic property.

Included as *Attachment B* are photos of some of the above-described, and similar, incidents.

One clinic has been unable to provide patient services on Saturdays for approximately 10 years because of repeated disruptions. Another clinic, has encountered protestors two to three times per week since they moved to their current location four years ago. The physicians at that clinic so fear for their safety that they wear bulletproof vests when entering and exiting the clinic. The clinic's Executive Director notes that, when confronted by protestors, some clinic patients leave, only to return several weeks later, after they have entered the second trimester. These patients must then undergo a more complicated procedure. Clearly, the actions of the protestors directly affect the health and medical safety of patients.

Limitations of State and Federal Laws – and The Need for this Ordinance in Oakland

Federal Law

The federal Freedom of Access to Clinic Entrances (FACE) Act of 1994 has resulted in the prosecutions of large-scale activities, such as clinic blockades, and has given federal law-enforcement agencies and prosecutors tools to attack other major crimes such as bombings, arsons, and killings. However, federal officers seldom visit the scenes of less heinous anti-reproductive-rights crimes, effectively curtailing prosecution of those offenses under FACE. Further, the expense of bringing civil actions intended to protect against offenses such as harassment may render the act's civil protections moot for smaller clinics. Another weakness includes a lack of explicit legal protections for those who assist others in obtaining or providing abortions. The FACE penalty is severe – prison terms of up to three years and fines of up to \$250,000 for repeat violent crimes, up to 10 years in prison if bodily injury results, and life in prison if death results.

However, the federal FACE Act has limitations:

- It has been of little use in prosecuting small-scale anti-abortion crimes, which are more common than large-scale anti-abortion crimes in California. Federal law-enforcement officials generally rely on local police to make arrests, which in some cases can be prosecuted under the tougher federal laws.
- Because it protects only those who obtain or provide abortions, it does not explicitly protect patient escorts, clinic defenders, patients' friends and family who assist them, clinic clerical staff, and others who assist clients or providers. Some federal jurisdictions interpret FACE to protect these assistants, while some do not.
- Small clinics often cannot afford to bring the civil suits on which much of the FACE Act's enforcement depends.

Further, the U.S. Supreme Court deprived clinics of an important federal tool used by clinics to fight violence in a February 2006 decision, *Scheidler v. NOW*, 547 U.S. 9 (2006), holding that the Racketeer Influenced and Corrupt Organizations (RICO) Act could not be used against those who organized violence aimed at closing women's health clinics and targeting physicians, clinic employees, or patients.

State Law

Although California has a wide (and sometimes confusing) array of laws that cover most – and very likely all – of the crimes that FACE covers, the penalties are much less severe than those imposed by FACE. The principal statutes covering blockading and obstructing health-care facilities are:

- Cal. Pen. Code Section 602.11, which even on a third offense limits penalties to 30 days in jail and a \$2,000 fine; and
- Cal. Civil Code Sections 3427, et seq., which provide no criminal penalties.

In 2001, the California Senate passed a state version of the FACE Act, the California Freedom of Access to Clinic and Church Entrances (FACE) Act, which provides concurrent state-federal

jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994. Although the California FACE Act extends protection to “reproductive health services clients, providers, or assistants,” it does not prohibit “harassment” or “counseling,” as defined in the proposed Oakland ordinance. The proposed ordinance seeks to broaden the type of harmful conduct prohibited.

Additionally, neither the federal FACE Act nor the California FACE Act establish a zone of protection around an individual. The proposed ordinance specifies a safety zone (aka “bubble”) of 8 feet around an individual to protect against conduct occurring within 100 feet of the entrance to a reproductive health care facility.

Finally, Temporary Restraining Orders (TRO’s) or stay-away orders authorized by the California FACE Act as a remedy are problematic for several reasons. First, several protestors have simply ignored stay-away orders, leaving it up to the clinic staff to prove the existence of the order when, and if, OPD gets involved (thereby allowing protestors to continue their harassment of patients until the TRO issue can be resolved). Second, some TRO’s have been dismissed, without notification of clinic staff or the protected party. Third, TRO’s are person-specific, so that when a TRO is issued against a protestor, the anti-abortion organization simply “switches out” protestors, and sends different individuals to that clinic. Further, because TRO’s are personal, every person to be protected (clinic staff and escorts) must be named on the order, thereby stripping them of their privacy.

What This Ordinance Will Do

The proposed Ordinance will address the limitations of federal and state law as follows:

- Prohibiting the use of force, threat of force, or physical obstruction to intentionally injure, harass, intimidate, or interfere with any person providing or obtaining reproductive health services.
- Within 100 feet of the entrance, prohibiting approaching within eight feet any person or motor vehicle seeking to enter the facility, without the consent of the person or vehicle occupant, for the purpose of interfering, harassing, injuring, or intimidating the person or vehicle occupant.
- Providing penalties of imprisonment in the county jail for up to one year and/or a fine of \$2,000.
- Specifying a safety zone (aka “bubble”) of 8 feet around an individual to protect against conduct occurring within 100 feet of the entrance to a reproductive health care facility.
- Broadening the type of harmful conduct prohibited, to include “harassment” or “counseling.”

SOLUTIONS FROM OTHER JURISDICTIONS

A number of government entities, including San Francisco, have passed legislation designed to establish “buffer” or “bubble” zones that limit how close to reproductive health facilities their clients protesters can approach. In *Hill v. Colorado*, 530 U.S. 703 (2000), the Supreme Court upheld a Colorado statute that made it unlawful, within 100 feet of a clinic entrance, to approach

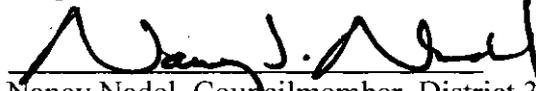
within 8 feet, an individual seeking reproductive health service, concluding that the statute was narrowly tailored, content neutral, and a valid time, place and manner restriction that did not violate the First Amendment .

CONCLUSION

The potential for violence in front of women's reproductive health facilities in Oakland is a clear and constant threat. The link between intimidation tactics and violence was charted in the 2005 National Clinic Violence Survey conducted by the Feminist Majority Foundation. That Study found that of the 200 clinics that experienced at least one form of intimidation, 55% also indicated that they had been targeted with one of the many forms of violence and harassment. The study noted that "when intimidation tactics occur at a clinic, the reported rate of violence triples."⁴ At the Oakland clinics, clinic volunteers and staff report that the aggressive nature of harassment and intimidation has noticeably escalated. Demonstrators often get within inches of, or actually come in physical contact with, patients and their family members, clinic escorts, doctors, nurses, and employees of reproductive health care facilities.

The proposed ordinance is a sensible measure to ensure safe and unimpeded access to reproductive health care facilities. We urge our colleagues to adopt this ordinance.

Respectfully submitted,


Nancy Nadel, Councilmember, District 3


Jane Brunner, Councilmember, District 1

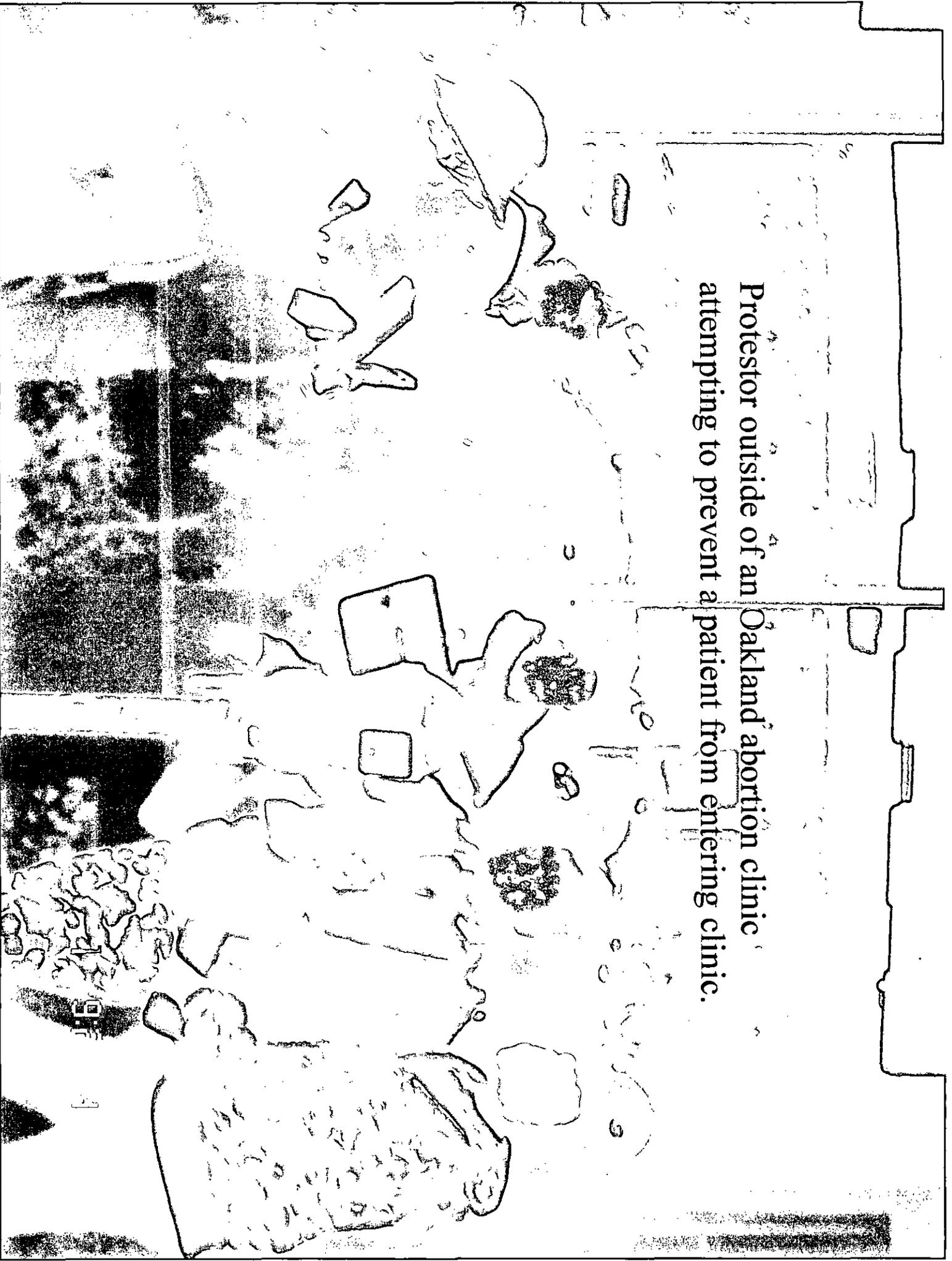

Jean Quan, Councilmember, District 4

Prepared by:
Marisa Arrona
Policy Analyst for Councilmember Nadel

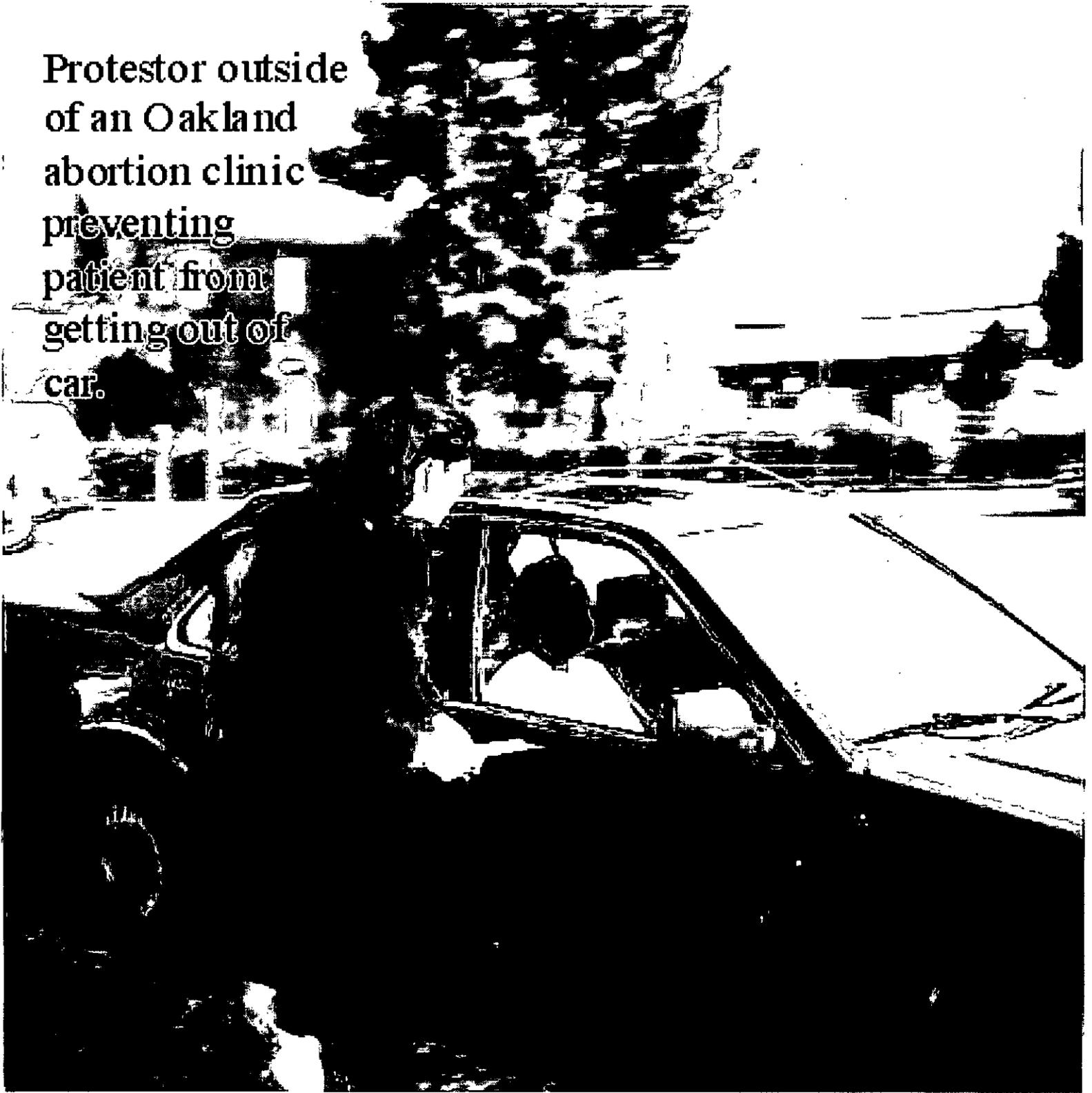
⁴ 2005 National Clinic Violence Survey, at p. 9.

ATTACHMENT A

Protestor outside of an Oakland abortion clinic attempting to prevent a patient from entering clinic.



Protestor outside
of an Oakland
abortion clinic
preventing
patient from
getting out of
car.





ATTACHMENT B

Individual Supporters:

Jill Adams	H. Nona Hungate
Sarah Avery	Neha Kamdar
Rose and Robert Black	Maureen Knightly-Adams
Leslie Bonett	J. Karla Lemon
Christine Brandes	Susan Levinkind
Darby and Bruno Brandli	Katie McCall
Robin Brooks, LCSW	Laura-Anne Minkoff
Laura K. Brown	Jean Paul
Oral Lee Brown	Lauren Quan
Phyllis Calechman	Carol Sanders
Cathy Cade	Bobbie Steinhart
Julie Craig	Kathleen E. Sullivan
Karen Davis	Lara Summerville
Aaron Dolores	Lisbet Tellefsen
Alexandra Dolores	Louis A. Timthony
Ellen Dolores	Justin Vandenbroucke
Beth Eisman	Carl Watson, M.D.
Barbara Ellis	Norma Jo Waxman, M.D.
Sina Ghadirian	Corey Weinstein
James R. Gormley	Marcos Weiss
Judy Grahn	Paul Wright, M. D.
Kazu Haga	Jonah Zern
Laine M. Harrington	Pilar Zuniga
Claudia Hartley	
Ericka Huggins	

2007 OCT 11 PM 4:08

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

Introduced by Councilmembers Nancy J. Nadel, Jane Brunner, and Jean Quan

**AN ORDINANCE AMENDING TITLE 8 OF THE CITY OF
OAKLAND MUNICIPAL CODE BY ADDING A NEW
CHAPTER, 8.50, ENTITLED "ACCESS TO REPRODUCTIVE
HEALTH CARE FACILITIES," AND NEW SECTIONS 8.50.010
THROUGH _____, TO PROTECT ACCESS TO
REPRODUCTIVE HEALTH CARE FACILITIES AND
CREATING A PRIVATE RIGHT OF ACTION FOR
VIOLATIONS OF THIS CHAPTER**

WHEREAS, safe and unimpeded access to reproductive health care services is critically and uniquely important to the public health, safety, and welfare so that persons desiring or needing access to such services should not be intimidated, hampered, impeded, harassed, or restrained from obtaining those services; and

WHEREAS, persons attempting to access reproductive health care facilities to obtain reproductive health care services have been subject to harassing or intimidating activity from extremely close proximity, tending to hamper or impede their access to those facilities and services; and

WHEREAS, such activity in close proximity subverts the right to privacy of those seeking reproductive health care services, a right that is protected by the United States Constitution and the Freedom of Access to Clinic Entrances Act, U.S.C.S. Section 248, and is explicitly guaranteed in California's Constitution, Article I, Section 1, including the right to seek and obtain all health care services permitted under the laws of this State; and

WHEREAS, such activity interferes with a person's right to seek reproductive health care treatment and counseling which such persons are entitled to seek and obtain; and

WHEREAS, offices and facilities that have patient stays of shorter duration may be more vulnerable to such subversion of rights on account of the layout and design of their facilities and parking areas as well as their staff deployment; and

WHEREAS, the adverse physiological and emotional effects created by such harassing or intimidating activities may pose health risks, interfere with medical treatment, diagnosis or recovery, or cause persons to delay or forego medical treatment; and

WHEREAS, this Ordinance does not preclude all protesting, picketing, demonstrating, leafleting, or educational activities near a facility providing reproductive health care services, but is a necessary content-neutral time, place, and manner restriction intended to reconcile and protect the rights of persons rendering or seeking reproductive health care with the First Amendment rights of demonstrators; and

WHEREAS, existing federal and state laws do not adequately protect the rights of those seeking or providing reproductive health care services; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Chapter 8.50 is added to the Oakland Municipal Code to read as follows:

- Sec Title and Purpose
- Sec Definitions
- Sec Prohibited Harassment of Individuals Seeking Access to Health Care Facilities
- Sec Enforcement
- Sec Accommodation of Competing Rights
- Sec Severability

Section 1. 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 Ordinance is not intended to create any limited, designated, or general public fora. Rather it is intended to protect those who seek access to health care from conduct which violates their rights.

Section 2. Definitions.

- a. "Reproductive health services" refers to all medical, surgical, counseling, referral, and informational services related to the human reproductive system, including services during pregnancy or the termination of a pregnancy, whether such services are provided in a clinic, physician's office, or other facility other than a 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.
- 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 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 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, in an effort to harass, intimidate, or persuade that individual not to access such reproductive health services.
- 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.

Section 3. 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 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 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 in connection with seeking reproductive health services, or for the purpose of interfering with that person's or vehicle occupant's obtaining or providing reproductive health services.
- c. Within 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 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.

Section 4. Enforcement.

- a. Any person who shall be convicted of a violation of subsection 3 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), or by both such fine and imprisonment.
- b. Civil Remedies:
 - i. Any person providing, seeking to provide, or seeking reproductive health services who is aggrieved by conduct prohibited by this ordinance may commence a civil action in the Courts of the State of California.
 - ii. In any action commenced under subparagraph a. of this subsection, 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 \$5,000 per violation.

Section 5. 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 Ordinance 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. This ordinance does not prohibit conduct by a party to a labor dispute in furtherance of labor or management objectives in that dispute.

Section 6. Severability. If any part, provision, or clause of this Ordinance 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES -- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT DE LA FUENTE

NOES --

ABSENT --

ABSTENTION --

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

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