

Order 90-13/14

Passed 9-0 as an Emergency on 11-18-13

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 17. OFFENSES  
ARTICLE VII - ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 17, Article VII (Access to Reproductive Health Care Facilities) of the Portland City Code is hereby adopted to read as follows:*

**Article VII: Access to Reproductive Health Care Facilities**

**Sec. 17-108. Findings; purposes.**

- (a) The City Council hereby finds as follows:
  - (1) Access to Reproductive Health Care Facilities is important for residents and visitors to the City of Portland and is a right that must be protected;
  - (2) The exercise of a person's right to protest or counsel against certain medical procedures is a First Amendment activity that must be protected;
  - (3) Public sidewalks adjacent to Reproductive Health Care Facilities located in the City of Portland are narrow, measuring between six and eight feet wide. These sidewalks abut busy city streets;
  - (4) Under Federal law (18 U.S.C. § 248 (2010)) and Maine state law (5 M.R.S. § 4684-B (2002)) it is unlawful for any person to obstruct or interfere with another person's access to reproductive health care services;

- (5) Recent demonstrations outside of reproductive health care facilities have caused patients and employees of these facilities to believe that their safety and right to privacy are threatened; and
- (6) Recent demonstrations outside of reproductive health care facilities have resulted in the fear and intimidation of patrons seeking to enter or leave other private businesses adjacent the reproductive health care facilities.

(b) The City Council further finds that it is in the interest of public health, safety and welfare to regulate the use of public sidewalks and streets adjacent to reproductive health care facilities in order to promote the free flow of traffic on streets and sidewalks, reduce disputes and potentially violent confrontations requiring significant law enforcement services, protect property rights, protect First Amendment freedoms of speech and expression and secure a citizen's right to seek reproductive health care services.

(c) The Council finds that the size of the limited buffer zone outside of reproductive health care facilities located in the City of Portland established by this Article is necessary to ensure that patients and employees of reproductive health care facilities have unimpeded access to reproductive health care services while also ensuring that the First Amendment rights of people to communicate their message to their intended audience is not unduly restricted or overburdened.

(d) The City Council seeks to provide unobstructed access to reproductive health care facilities by setting clear guidelines for activity in the immediate vicinity of the reproductive health care facilities.

(e) In adopting this ordinance, the Council recognizes and seeks to balance both the fundamental right to assemble peacefully and to demonstrate on matters of public concern, with the right to seek and obtain reproductive health care services. This ordinance is intended to promote the full exercise of these rights and to strike an appropriate accommodation between them.

**Sec. 17-109. Definitions.**

For the purposes of this Article:

"Reproductive health care facility" means a place, other than within or upon the grounds of a hospital, where health care services related to the human reproductive system, including abortions, are offered or performed.

"Patient escort services" means the act of physically escorting patients through the buffer zone to the reproductive health care facility and does not include counseling or protesting of any sort during such escort service.

**Sec. 17-110. Prohibited acts.**

(1) No person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius of 39 feet of any portion of an entrance, exit or driveway of a reproductive health care facility. This subsection shall not apply to the following:

- (a) Persons entering or leaving such facility;
- (b) Employees or agents of such facility acting within the scope of their employment for the purpose of providing patient escort services only;
- (c) Law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment;
- (d) Persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of reaching a destination other than such facility; and
- (e) Persons using the public sidewalk or street right-of-way adjacent to such facility solely for the purpose of de-boarding or waiting to board public transit.

(2) The provisions of subsection (1) shall only take effect during a facility's business hours and if the area contained within the radius described in subsection (1) is clearly marked and posted.

**Sec. 17-111. Enforcement.**

(1) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code

enforcement officer shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(2) Any violation of the provisions of this law constitutes a civil offense punishable by a minimum fine of \$100. The City may also seek and the court may order injunctive relief designed to prevent further violations of this Article.

**Sec. 17-112. Severability.**

If any section, sentence, clause or phrase of this Article is held invalid or unconstitutional by any court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this law.

**BE IT FURTHER ORDERED,** that this amendment is enacted as an Emergency pursuant to Article II, Section 11 of the Portland City Charter, in order to protect the public access to healthcare services as well as public safety.