



The City of San Diego

Staff Report

DATE ISSUED: 5/7/2024

TO: City Council

FROM: Office Of The City Attorney

SUBJECT: Proposed Amendments To San Diego Municipal Code Regarding Buffer Zones At Health Care Facilities, Places Of Worship, And School Grounds

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Council District(s): Citywide

OVERVIEW:

The City of San Diego has not updated its laws regarding access to health care facilities, places of worship, and school grounds (Covered Facilities) since 1997. Existing law imposes an onerous burden on individuals accessing Covered Facilities by requiring them to affirmatively assert their constitutional rights by telling protestors and others to back away. Existing law does not prohibit blocking entrances and exits to Covered Facilities or harassment or intimidation of persons trying to enter or exit Covered Facilities, but it should.

This item would protect the public's health and safety by amending the San Diego Municipal Code to protect people entering or exiting Covered Facilities from harassment and intimidation, ensure access doors and parking lot driveways for Covered Facilities are kept clear for pedestrians and vehicles trying to access them, and change the existing buffer zone to conform to buffer zone regulations upheld by the United States Supreme Court in *Hill v. Colorado*, 530 U.S. 703 (2000).

PROPOSED ACTIONS:

Introduction of an ordinance amending San Diego Municipal Code section 52.1001 and 52.1002 and adding new sections 52.1003, 52.1004, 52.1005, and 52.1006, and amending sections 58.0402 and 58.0403, relating to public access to health care facilities, places of worship, and school grounds.

DISCUSSION OF ITEM:

Buffer zones generally establish an area around a specific location where speech and demonstration activities are subject to regulations not applicable outside the area. In 1997, San Diego adopted a 100-foot buffer zone around entrances and exits to health care facilities, places of worship, and school grounds (Covered Facilities) to balance often competing rights to medical privacy, to freely gain access to

health care and educational services, to practice religion, and to freely exercise constitutionally protected speech. See San Diego Ordinance O-18452 (Dec. 16, 1997). The current law requires demonstrators within the 100-foot buffer zone of a Covered Facility to withdraw to 15 feet away from a person entering or exiting a Covered Facility if the person asks the demonstrator to do so.

Three years later, in *Hill v. Colorado*, the United States Supreme Court upheld a buffer zone law as a narrowly tailored, content neutral time, place, and manner regulation adopted to protect public safety and balance the competing rights of demonstrators and people entering and exiting abortion clinics in Colorado. As discussed more in the legal memorandum in the backup material, the Court upheld Colorado's buffer zone because eight feet was accepted as a conversational distance to allow demonstrators to still reach their audience while preserving the state's interest in ensuring safe access to health care clinics. The Court also found the Colorado statute constitutional because it could only be violated intentionally, allowing someone to avoid criminal penalties who was complying in good faith but unintentionally came within eight feet of someone entering the facility.

San Diego's laws protecting access to Covered Facilities are outdated. They impose an unreasonable burden on the person seeking to exercise protected rights to access health care or education services or to exercise religion. They do not do enough to protect employees, health care providers, patients, students and their guardians, and worshippers from harassment and abuse. They also pose potential safety risks presented by aggressive or harassing demonstrators who attempt to block entrances or exits to Covered Facilities or associated parking lot driveways. Law enforcement, operators of Covered Facilities, and the people who visit Covered Facilities would all benefit from better clarity in the law.

The City continues to have a strong interest in protecting safe and peaceful access to Covered Facilities. Covered Facilities continue to be places where competing interests of privacy rights, access, and protest and other protected speech activities can clash. Sometimes these activities do not remain peaceful. Health care providers, clinic employees, and patients report feeling threatened abandon efforts to enter, or are faced with aggressive demonstrators as they try to walk in the door or drive into parking lots. Employees have experienced intimidating tactics trying to get to work. In the last few years, health care facilities, especially those offering reproductive health care and gender affirming care, have continued face threats or acts of violence.

In response to the Supreme Court decision in *Dobbs v. Jackson Women's Health*, the California state legislature adopted several laws to make California a safe haven for those seeking an abortion and California voters enshrined the right to an abortion in the state constitution. California providers have seen an influx of patients from other states seeking reproductive health care services.

Since 2021, the San Diego Police Department has responded to complaints about demonstration activity at the Planned Parenthood location in Downtown San Diego on at least 32 separate occasions and received an additional 23 requests for response to disturbances and trespassing.

In a letter submitted to the Public Safety Committee in March, Planned Parenthood of the Pacific Southwest reported approximately 70 percent of its staff hear complaints from patients about feeling intimidated, harassed, or threatened by protest activity. Reports include protestors following patients into the health care facility, throwing papers in patients' vehicles or knocking on the vehicles' windows, and blocking entrances and exits to the facilities. Planned Parenthood staff also reported protestors aggressively confronting staff, following staff to their vehicles, taking pictures of their license plates, and yelling and screaming at them.

Places of worship and elementary and secondary schools are not immune from these demonstrations and competing interests. The state has taken several actions to support public safety at schools and places of worship, including Governor Newsom authorizing \$30 million in state funding to protect places of

worship.¹ More and more, places of worship are locations where people assemble and express ideas on a variety of issues, ranging from international affairs to Coronavirus responses.² Elementary, middle, and high schools have become assembly places for people to express positions on LGBTQ+ issues in schools, among others, and given proposed budget cuts statewide, further demonstration activity is anticipated.³ Poway Unified School District's Board of Directors had to adjourn a public meeting because protestors would not allow them to conduct a business meeting.⁴ During School Board Member Sabrina Bazzo's testimony to the Public Safety Committee supporting these amendments, she referenced multiple instances of anti-vaccine protestors blocking school operations during the pandemic.

Hill v. Colorado remains the controlling law on buffer zones.⁵ The proposed amendments are modeled after the regulations upheld by the United States Supreme Court and include prohibitions on blocking entrances and exits to Covered Facilities and on intimidation and harassment of people accessing Covered Facilities. The proposed amendments aim to prevent the obstruction, harassment, and intimidation of people entering and exiting Covered Facilities while preserving the fundamental constitutional rights of people to peacefully assemble and express opinions on matters of public concern.

Finally, the proposed amendments include noise regulations applicable throughout the City to address the negative impacts associated with excessive noise during business hours on student learning, sensitive health care procedures that may be conducted at a Covered Facility, and an individual's ability to practice their religion without competing with excessive noise.

City of San Diego Strategic Plan:

Work in partnership with all of our communities to achieve safe and livable neighborhoods by cultivating civic engagement and participation, and protecting lives, property, and the environment through timely and effective response in all communities.

Fiscal Considerations:

N/A

Charter Section 225 Disclosure of Business Interests:

N/A. There is no contract associated with this item.

¹ Gov. Newsom's Office Press Release, October 18, 2023, <https://www.gov.ca.gov/2023/10/18/faith-security-funding/> Accessed Mar. 14, 2024.

² Examples of escalating demonstration activity in California since 2020 include protests at scientology church in Los Angeles in 2024 <https://www.latimes.com/california/story/2024-02-21/anti-scientology-protests-lead-to-arrests-and-attacks-theres-a-war-going-on>; and assemblies and demonstrations related to pandemic closure of worship centers <https://www.sandiegouniontribune.com/news/religion/story/2020-08-09/hundreds-gather-to-worship-protest-closure-of-churches-amid-pandemic>. All links accessed Mar. 14, 2024.

³ Examples of escalating demonstration activity in California in the last year include demonstrations about school districts' recognizing June as Pride month, <https://apnews.com/article/glendale-school-district-pride-month-protests-fighting-adcb1e4f9051256a4f35fb3174137229> and flying the Pride flag, <https://abc7.com/temecula-high-school-lgbtq-protest/13816822/>. All links accessed in Mar. 14, 2024.

⁴ <https://www.sandiegouniontribune.com/pomerado-news/news/schools/story/2021-09-09/protesters-disrupt-poway-unified-board-meeting-force-its-ag>. Link accessed on May 3, 2024.

⁵ Last year, the Supreme Court declined to hear a legal challenge to a similar buffer zone regulation in New York. <https://www.jurist.org/news/2023/12/us-supreme-court-declines-case-surrounding-reproductive-health-clinic-buffer-zones/#:~:text=The%20US%20Supreme%20Court%20on,where%20protesters%20are%20not%20permitted>. Accessed Mar. 14, 2024.

City Strategic Plan Goal(s)/Objective(s):

Environmental Impact:

This activity is not a project pursuant to CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in direct or reasonably foreseeable indirect physical impacts to the environment. Therefore, this activity is not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Climate Action Plan Implementation:

N/A – Does not have a connection to the CAP.

Equal Opportunity Contracting Information (if applicable):

Previous Council and/or Committee Actions:

Public Safety Committee approved forwarding this item to City Council on March 20, 2024 with a vote of 4-0.

Key Stakeholders and Community Outreach Efforts:

N/A

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