

March 1, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

ORDINANCE PROTECTING ACCESS TO HEALTH CARE FACILITIES

The Public Services and Safety Committee, by motion at its October 14, 1992 meeting, requested the City Attorney to draft an ordinance for the City of San Diego identical to a City of San Jose ordinance protecting women seeking access to or departure from a health care facility. The City Attorney in his report of November 23, 1992 submitted the requested ordinance to the Honorable Mayor and City Council.

The draft ordinance contains two essential parts. One subsection makes it unlawful for any person in the course of demonstration activity to impede or hamper another person's access to a health care facility. San Diego Municipal Code Section 52.1001(a). As previously stated, this provision is most likely preempted by California state law which makes it a misdemeanor to intentionally prevent an individual from entering or exiting a health care facility, place of worship, or school "by physically obstructing the individual's passage" Penal Code Section 602.11(a).

The second essential part of the draft ordinance makes it unlawful for any person in the course of demonstration activity within the access area of a health care facility to fail to withdraw upon request to a distance of at least eight (8) feet away from any person who has made the request. San Diego Municipal Code Section 52.1001(b). This subsection of the ordinance is also referred to as the "bubble protection" provision.

The final paragraph in the City Attorney's report of November 23, 1992, to The Mayor and City Council stated that an amended draft ordinance omitting subsection 52.1001(a) considered preempted by state law and preserving the essential "bubble protection" provision has been prepared and is available for introduction at your request.

You informally requested copies of an amended draft ordinance omitting the provision duplicating state law and retaining the "bubble protection" provisions. Attachment One complies with that request.

You also informally requested copies of a draft ordinance omitting the provision duplicating state law and expanding the "bubble protection" provision to include places of worship and schools. This version of the draft ordinance corresponds to the language in California Penal Code section 602.11(a) which applies to health care facilities, places of worship or schools. Attachment Two complies with that request.

Respectfully submitted,
JOHN W. WITT
City Attorney
JMB:jp:011.2.4(043.1)
Attachments
RC-93-9