



The City of San Diego

Staff Report

DATE ISSUED: March 14, 2024

TO: City Council

FROM: City Attorney

SUBJECT: Consideration of Amendments to San Diego Municipal Code sections 52.1001 and 52.1002 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 tell 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.

This item would amend 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:

Request the Public Safety and Livable Neighborhoods Committee forward an ordinance amending San Diego Municipal Code sections 52.1001 and 52.1002 to City Council for consideration.

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.

The original ordinance was prepared in response to *Sabelko v. City of Phoenix*, a Ninth Circuit Court of Appeals case decided that same year finding that the buffer zone regulation in Phoenix was an unconstitutional regulation on free speech. Three years later, in *Hill v. Colorado*, the United States Supreme Court upheld a similar 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.

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.

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. As a result, health care providers, clinic employees, and patients feel threatened, abandon efforts to enter, or are faced with aggressive demonstrators as they try to walk in the door or drive into parking lots. In the last few years, health care facilities, especially those offering reproductive health care and gender affirming care, have continued to 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 actions to make California a safe haven for those seeking an abortion. California providers have seen an influx of patients from other states seeking reproductive health care services. Employees have experienced intimidating tactics trying to get to work.

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

Hill v. Colorado remains the controlling law on buffer zones.⁴ The proposed amendments are modeled after the regulations upheld by the 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.

City of San Diego Strategic Plan:

N/A – This item does not have a connection to the Strategic Plan.

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>; an altercation between demonstrators concerning October 2023 events in Israel resulted in death <https://www.cnn.com/2023/11/08/us/california-israel-hamas-protest-death-thursday/index.html>; 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 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.

Environmental Impact:

This activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(2), as these amendments to the San Diego Municipal Code would not result in a direct or reasonably foreseeable indirect physical change in the environment.

Climate Action Plan Implementation:

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

Equal Opportunity Contracting Information (if applicable):

N/A

Previous Council and/or Committee Actions:

N/A

Key Stakeholders and Community Outreach Efforts:

N/A

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