

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE AMENDING THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES TO ENSURE SAFE, UNOBSTRUCTED ENTRY TO AND EXIT FROM A HEALTHCARE FACILITY.

SPONSORED BY: COUNCIL MEMBERS CHAMBERS ARMSTRONG, ARTHUR, HOLLANDER, AND JAMES

WHEREAS, the Louisville Metro Council recognizes that unimpeded access to health care facilities for the purpose of obtaining medical counseling and treatment is imperative to the safety and well-being of this city and community; and

WHEREAS, that preventing the willful obstruction of a person’s access to medical counseling and treatment at a health care facility is a matter of city-wide concern; and

WHEREAS, there is a documented history of obstruction of and interference with people’s access to healthcare facilities in Louisville; and

WHEREAS, a federal district court, finding violations of the Freedom of Access to Clinic Entrances Act, 18 U.S.C.A. § 248 (1994), entered a Temporary Restraining Order against specific individuals and any others acting in concert or participation with them), but this order has since expired; and

WHEREAS, the Louisville Metro Police Department has documented the difficulty in enforcing current ordinances to allow safe, unobstructed passage to healthcare facilities; and

WHEREAS, the Supreme Court has recognized that the government has a legitimate interest in “ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2535 (2014)

(quoting *Schenck v. Pro-Choice Network of Western N.Y.*, 519 U.S. 357, 376 (1997));
and

WHEREAS in situations where there is a history of “protestors purposefully or effectively block[ing] or hinder[ing] people from entering and exiting clinic doorways,” a fixed buffer zone “around the doorways” and other property entry points has been found in to be “necessary to ensure that people . . . trying to enter or exit the clinic property . . . can do so.” *Schenck v. Pro-Choice Network of W. New York*, 519 U.S. 357, 380–81 (1997); and

WHEREAS, the limited size of the buffer zone outside of healthcare facilities’ entrances established by this legislation is necessary to ensure that patients and employees of healthcare facilities have unimpeded access to health care services and that traffic on busy city streets can proceed safely; and

WHEREAS, the limited size of the buffer zone ensures that the First Amendment rights of people to communicate their message to their intended audience is not unduly restricted or overburdened, and affects no more speech than is necessary to ensure access to healthcare facilities; and

WHEREAS, the Louisville Metro Council therefore declares that it is appropriate to enact legislation that ensures safe, unobstructed entry to and exit from a healthcare facility.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: A new subchapter of the Louisville Metro Code of Ordinances, 132.09, is hereby enacted as follows:

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) **Driveway** means an entry from a public street to a public or private parking area used by a healthcare facility.

(2) **Entrance** means any door to a healthcare facility that directly abuts the public sidewalk; provided, however, that if the door does not directly about the public sidewalk, the “entrance” shall be the point at which the public sidewalk intersects with a pathway leading to the door.

(3) **Healthcare facility** shall have the same definition as used in Ky. Rev. Stat. Ann. § 216B.015(1) and (13), as any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include but shall not be limited to health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, any place in which an abortion is performed, and others providing similarly organized services regardless of nomenclature; and shall include but not be limited to the buildings, grounds and driveways of each such facilities and parking lots in which each such facility has an ownership or leasehold interest.

(B) *Access to a healthcare facility.*

(1) No person shall knowingly obstruct, detain, hinder, impede, or block another person's entry to or exit from a healthcare facility.

(2) No person shall knowingly enter, remain on, or create any obstruction within the driveway of a healthcare facility or within a "buffer zone" on the public way or sidewalk extending from the entrance of a healthcare facility to the closest adjacent sidewalk curb and 10 feet from side to side, during the facility's posted business hours, except:

(a) persons entering or leaving such facility;

(b) 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; or

(c) law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment; or

(d) employees or agents of such facility acting within the scope of their employment.

(C) *Signage.*

(1) The Department of Public Works shall, at the request of a healthcare facility, paint or lay on the public way or sidewalk two easily-distinguishable demarcation lines running from either side of the facility entrance to the closest adjacent sidewalk curb and extending 10 feet from each other. Healthcare facilities shall post such zone with signage stating: "Healthcare facility: No standing within this zone. [Metro Ordinance]."

(D) *Penalties.*

(1) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement officer shall issue one written warning to an individual. If the individual fails

to comply after one warning, such individual shall be given a citation. Failure to comply after one warning shall be cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(2) Any person violating any of the provisions of this Ordinance shall for each such violation, upon conviction thereof, be subject to a fine of no less than one hundred and fifty dollars (\$150) and not more than five hundred dollars (\$500). If any individual is convicted for a second violation of this Ordinance within one year of a previous conviction under this Ordinance, that individual shall be subject to a fine of no less than two hundred and fifty dollars (\$250) and not more than five hundred dollars (\$500).

(E) *Severability*

(1) The provisions of this section are severable. If any provision of this ordinance is declared invalid, that invalidity shall not affect other provisions of the ordinance which can be given effect without the invalid provision.

SECTION II: This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____
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