



SAFE SPACE

ACTIVIST'S GUIDE TO CLINIC BUFFER ZONES
A project of the Women's Law Project

THIS MANUAL IS DEDICATED TO CLINIC ESCORTS EVERYWHERE, WITH GRATITUDE

ACKNOWLEDGMENTS

This guide was made possible by a generous grant from the National Institute for Reproductive Health (NIRH).

In May of 2008, NIRH undertook an Urban Initiative for Reproductive Health to focus attention on innovative policymaking at the local level to improve and protect reproductive health. The Urban Initiative brought together over 200 women's health advocates, local government officials, public health experts, and legislative staff from 30 cities for a one-of-a-kind summit to examine a range of local health initiatives, to strategize, and to share information and inspiration. The Pennsylvania delegation to the Urban Initiative summit shared the success of the Pittsburgh Medical Safety Zone Ordinance with the other attendees. Soon, requests for more information about the Pittsburgh buffer zone came from clinics in Pennsylvania, Texas, California, Illinois, New Mexico, and other jurisdictions struggling to cope with aggressive protesters. This manual represents our effort to respond to this need, and reflects our belief that local organizing by pro-choice community activists is a necessary part of any comprehensive strategy to protect women's access to abortion care.

On behalf of the women we serve and the reproductive health care providers who are our clients, the Women's Law Project thanks NIRH for their vision and leadership and for supporting this important work.

For more information about the National Institute for Reproductive Health or the Urban Initiative for Reproductive Health, go to www.nirhealth.org or www.UrbanInitiative.org.

DISCLAIMER: THIS GUIDE IS INTENDED TO PROVIDE GENERAL INFORMATION AND IS NOT INTENDED AS LEGAL ADVICE. REPRODUCTIVE HEALTH CARE PROVIDERS SHOULD SEEK LEGAL COUNSEL WITH SPECIAL EXPERTISE BEFORE PURSUING ANY OF THE STRATEGIES DISCUSSED IN THIS GUIDE.

IMPORTANT: THE LAW GOVERNING BUFFER ZONES, REPRODUCTIVE HEALTH CARE, AND THE RIGHT TO PROTEST IS CONTINUALLY EVOLVING. PLEASE CONSULT WITH YOUR ATTORNEY OR WITH THE WOMEN'S LAW PROJECT FOR RECENT DEVELOPMENTS.

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INTRODUCTION

This guide grows out of the experience of the Women’s Law Project and our clients, the reproductive health care providers of Pennsylvania. The Women’s Law Project is a nonprofit women’s legal advocacy organization with offices in Philadelphia and Pittsburgh. Since our founding in 1974, the Law Project—one of just a handful of nonprofit women’s legal advocacy organizations nationwide—has made reproductive justice its top priority.

The Law Project is perhaps best known for representing Pennsylvania abortion providers in the landmark U.S. Supreme Court case *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), upholding the core of *Roe v. Wade* while permitting greater restrictions on abortions. During the 1980s and 1990s, the Law Project represented a group of abortion providers in *Roe v. Operation Rescue*, 54 F.3d 133 (3d Cir. 1995), a federal lawsuit against Operation Rescue, Randall Terry, and other named clinic protesters which resulted in a permanent injunction prohibiting blockades of reproductive health care facilities in southeastern Pennsylvania. The Law Project brought three civil contempt actions under the *Operation Rescue* injunction, yielding contempt holdings and fines against clinic blockaders.

The three health care facilities in Pittsburgh are the only freestanding abortion providers in the entire

western half of the state, drawing patients from hundreds of miles away. Every week for years, protesters outside these three clinics created a crisis for staff, escorts, and patients. Patients had to push their way through dozens or even hundreds of protesters who were physically trying to stop them from getting to the clinic door. After other solutions failed, in 2005 the pro-choice community decided to seek a statutory buffer zone, and Pittsburgh City Council adopted a Medical Safety Zone Ordinance later that year (see Appendix A for the text of the ordinance as enacted). With one modification in 2009 which concluded a federal court challenge to the constitutionality of the ordinance, this law has been in effect since that time (see Appendix B for the permanent injunction order modifying the ordinance).

The Pittsburgh buffer zone ordinance has not stopped anti-abortion protests. However, it has improved the sidewalk atmosphere and sharply reduced the pushing, shoving, and obstruction which once plagued the patients and staff of these three facilities. This guide examines the lessons learned throughout the campaign to win a statutory buffer zone and the challenges advocates faced in implementing it.

While every jurisdiction poses unique problems and opportunities, we hope this discussion of our experience proves useful to advocates elsewhere who are thinking of pursuing a buffer zone strategy.

CONSIDERING A BUFFER ZONE?

"I personally as a physician feel very threatened when I go into the clinic, but I do it anyway because I think it is important. I have been personally harassed by the protesters. They've tried to keep me from going into the clinic and after I have entered through the glass doors they have continued to yell at me that my life will be damned because of the decision that I am making. This isn't counseling. It is intimidation and harassment."

—Testimony of Planned Parenthood physician, 12-07-05

A statutory buffer zone can:

- Prevent physical confrontations between patients and protesters
- Help staff and clients feel safer
- Provide clearer guidance for escorts, police and protesters
- Improve morale among escorts and clinic staff
- Be a useful tool as part of a comprehensive plan to protect clinic patients and staff

You might also reap these additional benefits from conducting a buffer zone campaign:

- Focus public attention on the importance of access to reproductive health care
- Help recruit more clinic escorts
- Give activists a unique opportunity to work on a local issue, offering a tangible and immediate opportunity to see the benefits of grassroots activism
- Improve relationships with the police
- Increase support from local government

You might experience these potential drawbacks from conducting a buffer zone campaign:

- It is possible to lose control of the process and end up passing legislation that does not help you, that is difficult to administer, or that does more harm than good
- Public hearings on buffer zone legislation will provide a platform for protesters to speak out against you
- A failed campaign could tire and demoralize staff and supporters
- A successful campaign could provoke a lawsuit against your municipality challenging the constitutionality of the ordinance

A buffer zone will not:

- Stop clinic protests
- Shield patients and staff from hate speech
- Eliminate the need for security staff and volunteer escorts

TIPS

- ➔ Before pursuing a buffer zone strategy, consider alternatives, including:
 - meeting with law enforcement to get better police protection
 - assessing whether you would be better off getting a buffer zone through civil litigation
 - increasing your escort presence
 - avoiding protesters by using a different door, installing a fence, or erecting a barrier
- ➔ Keep a record of the alternative strategies you attempted that failed to protect you, so you can demonstrate the necessity of a statutory buffer zone to your local government and, if necessary, in litigation.

HISTORY OF THE PITTSBURGH MEDICAL SAFETY ZONE ORDINANCE

"In the late 1980s, the anti-choice movement took to the streets to attempt to bar women from receiving healthcare. Pittsburgh was a hub of activity for Operation Rescue. They offered women approaching the clinics grossly misleading medical information. They also blockaded and vandalized these medical facilities. In front of one clinic, they parked a car under which people attached themselves with heavy chain. They broke into a clinic and stood in buckets of tar in the medical procedure room. They bodily sat in front of the clinics and went limp when the officers tried to remove them. These spectacles cost the City tens of thousands of dollars, yet in fact all of the patients eventually were seen at the clinic."

– Testimony of Deborah Levy McKinney, 12-07-05

Worst-Case Scenario: A Designated Protest Zone

Prior to adoption of the Pittsburgh Medical Safety Zone Ordinance, the City of Pittsburgh enforced a set of police department guidelines from 1998 to 2002 that functioned as the opposite of a buffer zone at one of the largest providers in Pennsylvania. The guidelines created a protest zone immediately in front of the clinic door, within which protesters were guaranteed access to patients. These guidelines entitled protesters to occupy 50% of the sidewalk immediately surrounding the clinic entrance and explicitly authorized them to come within *6 inches* of the patients' faces.

These guidelines arose out of negotiations between the City and abortion protesters after the protesters threatened to sue the City for allegedly infringing their First Amendment rights. The reproductive health care provider who was the subject of these guidelines objected to them, but had little voice in the process. These guidelines, which were lengthy, internally inconsistent, and in conflict with other laws, created havoc during weekly protests, and were only withdrawn when the provider moved to another location and successfully argued that the guidelines were site-specific.

This experience illustrates a worst-case scenario for providers considering adopting a buffer zone: can you control the process? If your bill gets amended beyond recognition, can you pull the plug?

Genesis of Pittsburgh Medical Safety Zone Ordinance

The Pittsburgh providers tried numerous other strategies before pursuing a statutory buffer zone, including:

- frequent meetings with police to improve law enforcement and crowd control;
- meeting with federal officials to urge enforcement of the Freedom of Access to Clinic Entrances (FACE) Act;
- considering private FACE actions;
- bringing private criminal complaints against individual protesters;
- requesting more police, more training for police, and a dedicated police presence outside the freestanding clinics;
- deploying volunteer escorts in varying configurations at protests.

The clinics' protester problem worsened substantially in 2004, when budgetary restrictions led the Pittsburgh Police Department to withdraw its weekly detail from the freestanding clinics. The straw that broke the camel's back was a Rock Concert for Life, for which the City had unknowingly issued a permit that closed down the entire street on which one of the clinics was located during the clinic's Saturday morning operating hours. Shortly after this debacle, in fall of 2005, Pittsburgh City Council took up consideration of an ordinance to protect the patrons of sidewalk cafes

“Saturday was quiet as well except for one fellow who thought it was okay for him to walk through the 15 foot buffer carrying a statue of Mary and talking to us. I asked him if he had heard of the Pittsburgh ordinance, he asked me if I had heard of “thou shalt not kill”. We went back and forth a bit but he left the buffer zone quickly.”

–P.H., volunteer clinic escort, 5/31/09

from the intrusion of panhandlers asking for spare change.

The pro-choice community asked why no such protection was offered to patients at medical facilities besieged by aggressive protesters.

We prepared an amendment to the panhandling bill that would have discreetly added reproductive health care facilities to it, but decided against this course of action for two reasons. First, many of us believed that the panhandling bill was insulting

to poor people, repugnant to social justice and unconstitutional, and should not be the vehicle for our amendment. Second, we concluded that we could not proceed by stealth.

We had to create a clear legislative record of the need for a clinic buffer zone in order to pass constitutional muster, and that would require public hearings. We withdrew the amendment after securing a promise from Council leaders to take up buffer zone legislation protecting medical facilities before the end of 2005.

TIPS

- ➔ Before pursuing legislation, ensure that your sponsors have the ability and will to scuttle their own bill if necessary to avert passage of any legislation that would do more harm than good. Get a clear commitment from them before moving forward.
- ➔ It is not advisable and probably not possible to have a secret campaign for a buffer zone ordinance. If you go down the road of seeking a statutory buffer zone, you should be prepared to debate it openly.

DRAFTING CONSIDERATIONS

“On many occasions patients will call our office from blocks away expressing their fear of our clinic protestors. Patients and their partners go through heightened states of anger, fear and anxiety after being approached by so-called sidewalk counselors. As a professional counselor I can assure you that shouting, threats and physical intimidation are not counseling techniques.”

–Testimony of Casey Sill, Clinic Counselor, 12-07-05

Types of Buffer and Bubble Zones

Buffer zones are limited place restrictions on expressive activity aimed at unwilling listeners. They exist in many contexts. A common example is the restriction on electioneering within a designated distance from the entrance to a polling place on election day.

Buffer zones can be created through legislation or as a court-imposed remedy in litigation. A court-ordered buffer zone applies only to named parties and others acting in concert with them who have actual knowledge of the court order. It can be challenging and time-consuming to prove that protesters were acting in concert with each other and protesters often deny having actual knowledge of the order. On the other hand, a statutory buffer zone, obtained through legislation, applies to everyone.

There are two basic models of statutory clinic buffer zones.

Fixed buffer zones regulate certain activity within a designated distance from the entrance to a health care facility, described as a semicircle or rectangle. Some fixed buffer zones extend to driveways and parking facilities of the covered health care facility. Example: Massachusetts statute, see *McCullen v. Coakley*, 386 F.3d 45 (1st Cir. 2004).

Floating bubble zones (also called **personal safety zones**) describe a larger protective zone, typically within 100 feet of the entrance to a health care

facility. Within this protective zone, no one may knowingly approach another person closer than 8 feet without that person’s consent for the purpose of protesting, counseling, leafleting or educating. Some versions also prohibit the knowing approach within 8 feet of an occupied vehicle. Example: Colorado statute, see *Hill v. Colorado*, 530 U.S. 703 (2000).

Tailoring the Ordinance to Address the Problem

Before the Pittsburgh ordinance was adopted, the protesters’ tactics included:

- Slow circling: loud praying by groups of protesters who walk in a slow, tight circle in front of the clinic entrance, obstructing passage to and from the clinic
- Stopping cars approaching the clinic and thrusting literature inside car windows
- Standing directly in front of patients, facing them and walking slowly backwards to slow their progress toward the clinic
- Walking so close to a patient that she would trip
- Pushing the escort or support person aside to get closer to the patient
- Jamming pamphlets inside patients’ coat pockets or purses
- Swarming patients waiting at the door to be admitted

This set of problem behavior suggested a need for a Colorado-style personal bubble zone to protect patients approaching the clinic. This provision creates a floating bubble that applies to everyone

“Those who consider it their duty to attempt to persuade women to continue an unwanted or ill-advised pregnancy cannot legally be prevented from doing so. I do not however believe they have a right to force themselves into the faces and physical space of these women and their loved ones in order to try to intimidate and impose their views on them. ”

–Testimony of Michele Feingold, Clinic Counselor, 12-07-05

within 100 feet of the entrance of a covered facility. Within that 100-foot zone, it is illegal for anyone “to knowingly approach another person within 8 feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area.” This provision had already been upheld by the U.S. Supreme Court in *Hill v. Colorado*.

After additional observation of protests and after consulting with Colorado providers, we added a 15-foot fixed buffer zone at entrances within which “no person or persons shall knowingly congregate, patrol, picket or demonstrate.” The purpose of this portion of the statute was to prevent the swarming and slow circling at the clinic entrance. Similar language had already been adopted and upheld in several court cases. See *Schenck v. Pro-Choice Network, Inc.*, 519 U.S. 357 (1997); *Madsen v. Women’s Health Center*, 512 U.S. 753 (1994).

We drew upon language that had already survived a constitutional challenge elsewhere, combining the two dominant models for buffer zone legislation. See Appendix A for Pittsburgh Medical Safety Zone Ordinance (2005) as enacted.

Constitutional Framework Governing Buffer Zone Legislation

The First Amendment limits the government’s power to regulate speech in public fora such as sidewalks and public streets. In order to survive a

constitutional challenge, a buffer zone ordinance must:

- Be **content neutral**. The government cannot regulate speech because of disagreement with the message it conveys.
- Be **viewpoint neutral**. A buffer zone cannot favor one viewpoint over another.
- Impose time, place, and manner restrictions that are **narrowly tailored to serve a significant government interest**.
- Leave open **ample alternative channels of communication**.

These ordinances are constitutional because they do not shut down expressive activities outside medical facilities. They simply establish “a minor place restriction on an extremely broad category of communications with unwilling listeners.” *Hill v. Colorado*, 530 U.S. 703, 723 (2000).

Examples: Patients, clinic staff and escorts would be equally subject to the same buffer zones as protesters. So, if your ordinance contains a fixed buffer zone around clinic entrances, your volunteers may not gather in it and chant pro-choice slogans. If your ordinance contains a floating bubble zone, your escorts may not approach patients within the designated distance without their consent.

The Clinic Employee Exemption

The Pittsburgh ordinance, like the statutes upon which it was modeled, exempts health care workers

“It is a traditional exercise of the State’s ‘police powers to protect the health and safety of their citizens.’ That interest may justify a special focus on unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests. Moreover, . . . rules that provide specific guidance to enforcement authorities serve the interest in evenhanded application of the law. . . . [T]hose interests . . . are unquestionably legitimate.”
–*Hill v. Colorado*, 530 U.S. 703, 715 (2000) (internal citations omitted).

(including agents of the health care facility, such as escorts) who are in the 15-foot fixed buffer zone for the purpose of assisting people to enter and exit the facility. The federal courts that have reviewed the ordinance concluded that this exemption did not convert the ordinance to a content-based or viewpoint-based measure. Likewise, the 15-foot zone can be occupied by police and public safety officers, fire and rescue personnel, or other emergency workers in the course of their official business.

As one court stated, “simply facilitating a patient’s access to reproductive healthcare services is not pro-choice advocacy.” *Hoye v. Oakland*, 3:07-cv-06411 (N.D. Cal. Aug. 4, 2009) (upholding Oakland Ordinance 12860).

Scope

The Pittsburgh ordinance covers all medical facilities, which are defined in the ordinance. We did not limit its scope to abortion providers, or reproductive health care providers, as we wanted to be certain that hospitals providing abortion care were covered, and applying this ordinance to all medical facilities highlighted the content-neutrality of the measure.

Unlike some other buffer zone ordinances, the Pittsburgh ordinance did not define “medical facility” to include parking lots or driveways of medical providers, because none of the three affected providers has a parking lot or driveway.

Legislative Purpose: Public Health and Safety

Our sponsors favored a public health and safety message, naming the measure the “Public Safety at Health Care Facilities Ordinance.” The message they conveyed was that the buffer zone ordinance was necessary to ensure safety in the highly-charged atmosphere outside medical facilities. By setting clear rules, the ordinance would protect the public, including the protesters. The preamble also acknowledged the First Amendment rights of protesters and stated that it was not the purpose of the ordinance to infringe on speech. Creating a safe and orderly environment on the street could even be beneficial to any good faith efforts to engage in discussion or debate.

In *Brown v. Pittsburgh*, a challenge to the Pittsburgh ordinance, the court of appeals ruled that the stated legislative purpose of promoting public health and safety was a sufficiently important interest to support a buffer zone ordinance. On the other hand, the Court refrained from deciding whether the secondary goal of permitting the police to deploy limited law enforcement resources more efficiently would be sufficiently important to justify a buffer zone. Accordingly, buffer zone ordinances should not rest principally or solely on the goal of increased efficiency in the use of police resources.

Penalties

We chose light penalties: a \$50 fine for a first offense, escalating in steps to a maximum fine of

“We have been fire bombed. We have been flooded, intentionally flooded. We have had our windows shot out and for our younger members of Council who may not remember, there was also a time period when in fact we would have between 600 and 800 protestors that the City would have to arrest, take into town, write them up. ”

–*Testimony of Claire Keyes, Executive Director, Allegheny Reproductive Health Center, 12-07-05*

\$300 and 30 days imprisonment for fourth and subsequent offenses. Heavier penalties could violate the limits of Pittsburgh’s municipal authority under state law, and would have the unwelcome effect of discouraging vigorous enforcement.

We did not include a private right of action (which would have permitted private lawsuits for violations of the ordinance) out of concern that it would be turned against clinic staff and escorts and used to harass them.

Our sponsor inserted language relating to a community service alternative that is common in many local penal ordinances.

Severability

The ordinance contains an express severability clause stating that if any portion of the ordinance was invalidated, the remainder would continue in effect. This severability clause proved to be helpful; the court of appeals cited it in preserving the modified buffer zone ordinance.

See Appendix A for the complete text of the original Pittsburgh Medical Safety Zone Ordinance.

TIPS

- ➔ Because your buffer zone language should be tailored to address the most problematic behavior, it is advisable for the drafter or drafting committee to observe protests in person and to consult with escorts and other frontline clinic workers in developing the proposed language. Unless you have no alternative, the preliminary drafting is a task that should not be delegated to your legislative sponsor or council staff, though you will want to involve them later.
- ➔ Don’t forget to measure! It is possible that an extra foot or two could make all the difference in giving you a buffer zone that works. Take a tape measure out to the sidewalk and see what will work best for you. Select the smallest buffer zone that will effectively address your problem.
- ➔ After your buffer zone legislation takes effect, collect and date the anti-abortion leaflets and brochures your patients carry into the clinic to show that the buffer zone is not interfering with the ability of abortion protesters to convey their message to their intended audience through leafleting.
- ➔ Write your legislative purpose clearly into the preamble of your legislation. Make sure your legislative sponsors and witnesses reiterate this purpose in their remarks on the record.

THE LEGISLATIVE PROCESS

“From February 2005 to November 2005, a ten month period, there were 13 cases of aggressive pushing, shoving and hitting and 30 complaints of harassing behavior that included shoving literature into people’s pockets, hitting them with signs and blocking their entrance into the building.”

–*Testimony of Kim Evert, Executive Director, Planned Parenthood of Western Pennsylvania, 12-07-05*

Laying the groundwork with City Council

Our coalition, composed of providers, women’s organizations, escorts, and student groups, already had a relationship with many members of City Council from previous legislative campaigns, and had already begun discussions of the issue when the panhandling legislation was pending.

City Council President Doug Shields emerged as the prime sponsor of the legislation, and he was joined by a number of his colleagues as co-sponsors. We met with each sponsor at length to discuss the need for the ordinance, the exact configuration of the buffer zones, and how to respond to arguments against the legislation. These meetings occurred before the ordinance was introduced.

In choosing a prime sponsor, you might consider:

- A powerful or senior legislator
- A legislator who sometimes sides with conservatives
- A fighter
- A good public speaker
- Someone with a good relationship to the mayor or other executive officer, if their approval is necessary to enact an ordinance
- Most importantly, someone you trust.

Touching base with key players

Before the bill was introduced, we discussed it with allies who we hoped would support it or at least

remain neutral, including labor unions and the ACLU. We also met with the city solicitor to discuss technical drafting details, to make sure we understood the legislative process in detail, and to offer to answer any questions about the ordinance that might arise as the solicitor drafted her legal opinion regarding the constitutionality of the ordinance.

Message development and working with the media

The First Amendment is the friend of any oppressed people who advocate for social justice. Our coalition members did not permit their support for a buffer zone to be characterized as an attack on free speech or portrayed as inconsistent with the First Amendment.

Editorial boards are stalwart defenders of the First Amendment, and are likely to have questions about the impact of a buffer zone ordinance on free speech. The first editorial about the proposed ordinance in the *Pittsburgh Post-Gazette*, our largest newspaper, was skeptical, questioning whether a buffer zone was necessary. We requested and were granted a meeting with the editorial board. We brought along a doctor who discussed her experiences being harassed and intimidated by protesters. This doctor subsequently testified at the public hearings on the bill. Her firsthand, credible description of the rough and threatening treatment she had come to expect outside her workplace resulted in a second editorial, strongly supporting the buffer zone legislation.

“The blood will be on you for a thousand generations. Gentlemen, please hear God in this issue and not the jezebels that stand before you today. ”
–*Testimony of Frank Parente, Protester, 12-07-05*

Messages to avoid:

Content-based or viewpoint-based messages: To survive constitutional review, it is important that the buffer zone apply regardless of the content of the affected speech. Your message should mirror this content neutrality. For example, avoid messages such as “The government should not permit these awful protesters to tell their lies to these vulnerable women,” or “Only pro-choice messages should be allowed in this space.” A buffer zone that prohibits picketing or demonstrating within a fixed zone should apply regardless of the content of the protest.

Maximization of law enforcement resources: While City Council found it compelling that the Pittsburgh Police Department has spent extraordinary resources responding to weekly clinic protests, the U.S. Court of Appeals for the Third Circuit expressed doubt that economizing on law enforcement resources could ever be a sufficient legislative purpose to justify a buffer zone.

Public hearings

Pittsburgh City Council permits any City resident to sign up to deliver oral testimony on proposed legislation. Because each speaker was limited to three minutes, many witnesses supplemented their oral presentations with more extensive written testimony.

Who Should Testify?

- Directors of reproductive health care providers
- Escort coordinators and escorts
- Professional pregnancy options counselors

- Doctors who have been targeted by protesters
- Patients who have experienced obstructive and confrontational protests
- Police and security guards
- Legal experts (county or city solicitor, lawyer for reproductive health care providers)
- Religious leaders
- Opinion makers

What should you do about anti-abortion witnesses?

Anti-choice witnesses are entitled to be heard, too. That said, you can be prepared to rebut any factual inaccuracies made by these witnesses.

For example, during the public hearings in Pittsburgh, protesters claimed that there was no need for the ordinance because protesters always behaved in a peaceful, prayerful manner. Witnesses should be prepared with specific examples to rebut these claims.

Responding to arguments against buffer zones

- *“Buffer zones violate my First Amendment right to free speech.”*

Government may impose certain limited, content-neutral rules regulating the time, place, and manner of speech. As the *Hill* Court observed, everyone is “still able to protest, counsel, shout, implore, dissuade, persuade, educate, inform, and distribute regarding abortion” so long as they remain outside the defined buffer or bubble zone. *Hill*, 530 U.S. at 714. Protesters may still distribute

**“Our escorts were, as usual, disciplined and all the patients were safely walked to the clinic.”
–P.H., volunteer clinic escort, 4-15-09**

their leaflets and make their message available to patients and passersby. Buffer zones facilitate

patient access to health care and are public safety measures. They are place regulations, not regulations attempting to muzzle, silence, or otherwise dictate the content of a protester’s speech.

- *“Buffer zones are selectively enforced against pro-life people.”*

Buffer zones apply to everyone. Neither pro-choice nor anti-abortion protesters can advocate within the buffer zone. Buffer zones do not discriminate based on points of view. As the *Hill* Court stated, the buffer or bubble zone statute applies “equally to used car salesmen, animal rights activists, fundraisers, environmentalists, and missionaries,”

not just to anti-abortion protesters. 530 U.S. at 723.

While clinic staff and volunteers may escort women to and from the clinic through the buffer zone, they cannot advocate within the zone itself.

- *“Existing laws are adequate in protecting patients and staff from protesters.”*

Buffer zone ordinances are established on behalf of public safety and patient access. They provide a clear line around entrances for law enforcement officials, protesters, patients, and clinic staff alike. Buffer zones are particularly useful in areas where police presence is less regular, or where enforcement of harassment laws and ordinances may be spotty. By providing a clearly marked line, law enforcement officials are better able to enforce the law.

TIPS

- ➔ Visit every councilperson, even if you know he or she disagrees with you.
- ➔ Make a diagram of the proposed buffer zone and have it with you whenever you discuss it. It is much easier to explain if you have even a rudimentary drawing to refer to.
- ➔ Focus attention on the experiences of women and medical staff. Practice communicating detailed, crisp descriptions of typical protests, with photos or videotaped footage if possible, together with examples of the impact of confrontational protests on patients. HOWEVER, avoid photographing or videotaping identifiable images of patients or staff.
- ➔ Bring enough copies of your written testimony to distribute to media and allies as well as all members of City Council.
- ➔ Bring a tape measure to the hearings so you can demonstrate the size of the proposed buffer zone. Scope out the hearing room in advance.
- ➔ Make sure your City Council invites opponents of the buffer zone to testify. You do not need numerical equivalence, but if anyone in your jurisdiction opposes the legislation, they should have an opportunity to testify.
- ➔ Ask whoever schedules your witnesses to schedule one of your stronger witnesses to testify after your opponents, in order to rebut inaccurate or untruthful testimony. Rebuttal should be crisp, factual, and respectful. You should focus on rebutting incorrect facts, not arguing with religious beliefs or ridiculing your opponents.

IMPLEMENTATION

“For the second week in a row we didn't have any chalk, so we had no 15 foot line. Even if we had chalk, it would have been a messy line to draw through snow, ice and salt. We would really appreciate anything that would facilitate a permanent line.”

—N.B., volunteer clinic escort, 11-22-08

Line drawing

It was necessary for city officials to draw the buffer zone lines on the sidewalk in order to give clear notice of where the protective zones began. The lines, created with plain white or orange paint, would wear away after six months, and sometimes the process of getting the lines repainted was an onerous one, involving repeated requests to city officials.

Training of escorts and police

Following passage of the Pittsburgh Medical Safety Zone Ordinance, a meeting of escorts and clinic staff was convened to discuss how to implement the ordinance. Most questions concerned the 8-foot floating bubble zone, and whether protesters could be cited the first time they approached without consent. Because the offense is committed when one “knowingly” approaches without consent, we concluded that it would be easier to prove a violation if the victim had already clearly told the offender to back off.

Questions which arose about the implementation of the ordinance during protests were referred to the city solicitor, who trained the police in applying the ordinance.

Legal challenges: *Brown v. City of Pittsburgh*

In a long-awaited ruling, on October 30, 2009, the U.S. Court of Appeals for the Third Circuit issued an 83-page ruling upholding a modified version of Pittsburgh’s Medical Safety Zone Ordinance against

a constitutional challenge by an anti-abortion protester. Chief Judge Scirica, writing for a three-judge panel that included Judges Ambro and Smith, upheld the constitutionality of both operative provisions of the ordinance—a 15-foot fixed no-protest zone around clinic entrances and a floating 8-foot personal bubble zone of protection around each person approaching the clinic. The court determined that both zones are content-neutral and consistent with the First Amendment speech and free exercise clauses, the Equal Protection Clause, and the Pennsylvania Religious Freedom Protection Act.

However, while noting that “the question is close” and that the Supreme Court’s clinic buffer zone jurisprudence did not dispose of the issue, the appeals court concluded that the combination of the two zones was, “on this record,” insufficiently narrowly tailored, and that the City could therefore keep one but not both kinds of protective zones. (The record before the appeals court, developed at a preliminary stage of litigation, did not include testimony of any clinic escorts, staff or patients.) The appeals court remanded the case to the trial judge to permit the City to determine which of the two types of buffer zones it wished to keep. The panel also affirmed the trial court’s preliminary ruling rejecting Mary Kathryn Brown’s claim that the ordinance had been selectively enforced against her because of her anti-abortion viewpoint, and sustained the trial court’s dismissal of portions of Brown’s complaint.

After consultation with the Women’s Law Project and in accordance with the unanimous

“The buffer zone is a tool that we use every day to protect patients, escorts and clinic staff. To say it has made a significant difference to the lives of patients and to the ability of the escorts to do our jobs would be an understatement. The buffer zone, the police, the escorts, and most importantly the Women’s Law Project have made the Pittsburgh clinics safe and accessible. That’s the legacy of the struggle for the buffer zone.”
- P.H., volunteer clinic escort

recommendation of Pittsburgh clinic staff and escorts, the City of Pittsburgh requested that the ordinance be modified to retain the 15-foot fixed zone. On December 17, 2009, Judge Nora Barry Fischer entered a permanent injunction adopting this recommendation and ending the litigation.

Escorts and clinic staff are currently assessing whether the remaining 15-foot buffer zone adequately protects patients and staff or whether it will be necessary to strengthen the ordinance by amending it. Even as modified, the Pittsburgh Medical Safety Zone Ordinance has vastly improved the safety of patients and clinic staff during anti-abortion protests.



City of Pittsburgh

Text File

Introduced:	11/29/2005	Bill No:	2005-1944
Committee:	Public Safety Services Committee	Status:	To Be Presented

SPONSORED BY: DOUGLAS SHIELDS; WILLIAM PEDUTO AND JIM MOTZNIK

Presented by Mr. Bodack

Ordinance supplementing the Pittsburgh Code of Ordinances, Title 6, Conduct, Article I: Regulated Rights and Actions, by adding a new Chapter at 623 “Public Safety at Health Care Facilities,” to allow for unimpeded access to hospitals and/or health care facilities and providing penalties for violations of this ordinance.

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Pittsburgh Code of Ordinances, Title 6, Conduct, Article I: Regulated Rights and Actions, is hereby supplemented by adding a new Chapter at 623 “Public Safety at Health Care Facilities,” as follows:

CHAPTER 623: PUBLIC SAFETY AT HEALTH CARE FACILITIES

§ 623.01 INTENT OF COUNCIL

The City Council recognizes that access to Health Care Facilities for the purpose of obtaining medical counseling and treatment is important for residents and visitors to the City. The exercise of a person's right to protest or counsel against certain medical procedures is a First Amendment activity that must be balanced against another person's right to obtain medical counseling and treatment in an unobstructed manner; and

The City of Pittsburgh Bureau of Police has been consistently called upon in at least two locations within the City to mediate the disputes between those seeking medical counseling and treatment and those who would counsel against their actions so as to (i) avoid violent confrontations which would lead to criminal charges and (ii) enforce existing City Ordinances which regulate use of public sidewalks and other conduct;

Such services require a dedicated and indefinite appropriation of policing services, which is being provided to the neglect of the law enforcement needs of the Zones in which these facilities exist.

The City seeks a more efficient and wider deployment of its services which will help also reduce the risk of violence and provide unobstructed access to Health Care Facilities by setting clear guidelines

for activity in the immediate vicinity of the entrances to Health Care Facilities;

The Council finds that the limited buffer and bubble zones outside of Health Care Facilities established by this Ordinance will ensure that patients have unimpeded access to medical

services while ensuring that the First Amendment rights of demonstrators to communicate their message to their intended audience is not impaired.

§ 623.02 DEFINITIONS

Hospital means an institution that: 1. Offers services beyond those required for room, board, personal services and general nursing care; and, 2. Offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and, 3. Regularly makes available clinical laboratory services, diagnostic x-ray services, and treatment facilities for surgery or obstetrical treatment of similar extent. Hospitals may include offices for medical and dental personnel, central facilities such as pharmacies, medical laboratories and other related uses.

Medical Office/Clinic means an establishment providing therapeutic, preventative, corrective, healing and health-building treatment services on an out-patient basis by physicians, dentists and other practitioners. Typical uses include medical and dental offices and clinics and out-patient medical laboratories.

§ 623.03 EIGHT-FOOT PERSONAL BUBBLE ZONE

No person shall knowingly approach another person within eight feet (8') of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet (100') from any entrance door to a hospital and/or medical office/clinic.

§ 623.04. FIFTEEN-FOOT BUFFER ZONE

No person or persons shall knowingly congregate, patrol, picket or demonstrate in a zone extending fifteen feet (15') from any entrance to the hospital and or health care facility. This section shall not apply to police and public safety officers, fire and rescue personnel, or other emergency workers in the course of their official business, or to authorized security personnel employees or agents of the hospital, medical office or clinic engaged in assisting patients and other persons to enter or exit the hospital, medical office, or clinic.

§ 623.05 PENALTY

Any person, firm, or corporation who pleads guilty or *nolo contendere*, or is convicted of violating of this section shall be guilty of a summary offense and punished by a fine of at least fifty dollars (\$50.00) for the first offense; a fine of at least one hundred fifty dollars (\$150.00) for a second

offense within five (5) years; and a fine of three hundred dollars (\$300.00) for a third offense within five (5) years.

For fourth and subsequent offenses within five (5) years the fine shall not be less than three hundred dollars (\$300.00) and/or imprisonment for not less than three (3) days but not more than thirty (30) days.

No part of the minimum fine may be suspended or discharged, except upon proof and a finding of indigence by the court. Indigent defendants may pay fines imposed under this section by participation in a court designated community service program, crediting the commensurate dollar amount of each hour of community service toward payment of the minimum fine owed.

623.06 SEVERABILITY

The provisions of this ordinance are severable. If any portion of this Chapter is held invalid, unenforceable, or unconstitutional by any court of competent jurisdiction, it shall not affect the validity of the remaining portions of this Chapter, which shall be given full force and effect.

623.07 EFFECTIVE DATE

This Ordinance shall become effective immediately upon the signature of the Mayor, or ten days after the City Clerk provides this ordinance to the mayor for signature.

Finally, that any Ordinance or Resolution or part thereof conflicting with the provisions of this Ordinance, is hereby repealed so far as the same affects this Ordinance.

Effective Date: _____

Passed in Council: _____

Approved: _____

Recorded in R.B. _____ **page** _____

in City Clerk's Office.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARY KATHRYN BROWN,)	
)	
Plaintiff,)	
)	Civil Action No. 06-393
vs.)	Judge Nora Barry Fischer
)	
CITY OF PITTSBURGH, et al.,)	
)	
Defendants.)	
)	

ORDER GRANTING PERMANENT INJUNCTION

1.) Section 623.03 of the Ordinance No. 49, Pittsburgh Code title 6, enacted in December, 2005, is hereby permanently enjoined *in toto*.

2.) Defendants shall construe and enforce Section 623.04 of the Ordinance in a manner that does not permit any person to picket or demonstrate within the boundaries of the 15 foot buffer zone. Accordingly, assisting patients and other persons to enter or exit a hospital, medical office or clinic is permissible if it does not include any action, activity or signage in the form of picketing or demonstrating.

3.) Defendants shall provide training to Pittsburgh City Police concerning proper enforcement of the Ordinance, in both written and oral form.

4.) Defendants shall provide a copy of such written training materials to Plaintiff.

5.) Defendants shall clearly mark the boundaries of any 15 foot buffer zone in front of any hospital, medical office or clinic prior to the enforcement of the Ordinance.

6.) Defendants shall remove any and all current markings that delineate the now-stricken

100 foot zone.

7.) The submission of this Order resolves all outstanding matters of dispute between the parties, except for the parties' remaining dispute concerning attorney fees, costs and/or prevailing party status.

This Order shall constitute the final judgment of the Court in this matter.

The foregoing is HEREBY ORDERED, ADJUDGED, and DECREED.

s/Nora Barry Fischer
Nora Barry Fischer

Dated: December 17, 2009.
CC/ECF: All counsel of record.

SUPPORT YOUR LOCAL REPRODUCTIVE HEALTH CARE PROVIDER

- Volunteer as an escort.
- Sponsor and help organize a meeting of community leaders to discuss clinic safety.
- Challenge public statements characterizing abortion as “murder” and providers of abortion care as evil.
- Contribute to a pro-choice organization.
- Ask your local provider if you can organize a “pledge-a-picket” drive and donate the proceeds to the provider.

WOMEN'S LAW PROJECT

Safeguarding Rights, Creating Opportunities

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