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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. 13378 C.M.S.

INTRODUCED BY VICE MAYOR ANNIE CAMPBELL WASHINGTON,
OAKLAND CITY ATTORNEY BARBARA J. PARKER,
COUNCILMEMBER ABEL GUILLEN, AND COUNCILMEMBER REBECCA KAPLAN

ADOPT AN ORDINANCE AMENDING SECTION 5.06 OF THE OAKLAND MUNICIPAL CODE TO PROHIBIT LIMITED SERVICES PREGNANCY CENTERS FROM MAKING FALSE OR MISLEADING STATEMENTS TO THE PUBLIC ABOUT PREGNANCY-RELATED SERVICES THE CENTERS OFFER OR PERFORM.

WHEREAS, a woman's right to choose whether to terminate a pregnancy is protected by both the federal and state Constitutions, and is protected from interference by third parties and the government; and

WHEREAS, when a woman considers termination of a pregnancy, time is a critical factor. Delays in deciding to terminate a pregnancy may mean that a less invasive option is no longer available or that the option to terminate a pregnancy is no longer available; and

WHEREAS, many people have deeply held religious and moral beliefs both supporting and opposing abortion, and the City respects the right of individuals to express and promote such beliefs; and

WHEREAS, in recent years, clinics that seek to counsel clients against abortion have become common throughout California. These clinics are often referred to as crisis pregnancy centers or limited services pregnancy centers. Although some of these centers (referred to herein as "LSPCs") are licensed to provide various medical services to pregnant women, most LSPCs are not licensed medical clinics; and

WHEREAS, some LSPCs openly acknowledge, in their advertising and their facilities, that they do not provide abortions or access to emergency contraception or refer clients to other providers of such services. Some of these same LSPCs also openly acknowledge that they believe abortion is morally wrong. Many LSPCs, however, seek to mislead women contemplating abortion into believing that their facilities offer abortion services and unbiased counseling. This misleading of women seeking medical advice and/or care has the potential to be extremely harmful to women; and

WHEREAS, the City respects the right of LSPCs to counsel against abortions, if the centers are otherwise operating in compliance with this Chapter, and the City does not intend by this Chapter to regulate, limit or curtail such advocacy; and

WHEREAS, the City has carefully balanced (1) the constitutionally protected right of a woman to choose to terminate her pregnancy, (2) the right of individuals to express their religious and ethical beliefs about abortion, (3) the serious harm to women that can result from even slight delays due to false advertising for pregnancy and/or abortion services, and (4) the cost to local taxpayers that can accrue from such delay, the City has determined that there exists a need to regulate false and misleading advertising by pregnancy clinics offering limited services; and

WHEREAS, there are several circumstances prompting the need for LSPC regulation that is more protective of potential consumers of pregnancy center services; and

WHEREAS, LSPCs often purchase "pay per click" ads on online search services such as Google for terms such as "abortion," so that persons searching for abortion services will see a link and advertisement for the LSPC at the top of the results page. In addition, many LSPCs advertise on billboards, mass-transit facilities, and through websites; and

WHEREAS, LSPCs often change their names, making it difficult for potential clients to do online research and find reviews of their services. Although the name of the LSPC organization may change, the entity does not, as evidenced by maintaining the same address and location, phone number, license number with the Department of Public Health and Federal Tax Identification number; and

WHEREAS, most clients do not come to LSPCs as a result of a referral from a medical professional. Clients seeking information regarding options to terminate a pregnancy commonly experience emotional and physical stress and are therefore especially susceptible to false or misleading elements in advertising by LSPCs. These circumstances raise the need for regulation that is more protective of potential consumers of pregnancy center services; and

WHEREAS, due to the time-sensitive and constitutionally protected nature of the decision to terminate a pregnancy, false and misleading advertising by clinics that do not offer or refer clients for abortion or access to emergency contraception is of special concern to the City. When a woman is misled into believing that a clinic offers services that it does not in fact offer, she loses time crucial to the decision whether to terminate a pregnancy. Under these same circumstances a client may also lose the option to choose a particular procedure, or to terminate the pregnancy at all; and

WHEREAS, the State of California recently recognized this problem and passed the Reproductive FACT Act, and in turn, LSPC proponents have filed suit for their right to withhold information from clients. In addition, there are several cities within California and many states across the Country seeking to address this issue; and

WHEREAS, local tax dollars provide the financial support for local medical providers of last resort for indigent individuals who need medical care. These individuals include women facing unexpected pregnancies; and

WHEREAS, if women who have chosen to terminate a pregnancy are misled and delayed by the false advertising of LSPCs, the cost of providing more invasive and expensive options may fall upon health facilities funded by local taxpayers, which provide the medical services of last resort for the City's indigent population; now, therefore be it

RESOLVED: that the City of Oakland has determined that there exists a need to regulate false and misleading advertising by pregnancy clinics offering limited services.

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SEC 5.06.110. TITLE

This new Section 5.06.110 of Oakland Municipal Code Chapter 5.06, entitled Advertising Matter, shall be known as the "Pregnancy Information Disclosure and Protection Ordinance."

SECTION 1. Findings. The City Council finds and determines the foregoing findings to be true and correct and hereby makes them a part of this ordinance.

1. A woman's right to choose whether to terminate a pregnancy is protected by both the federal and state Constitutions, and is protected from interference by third parties and the government.

2. When a woman considers termination of a pregnancy, time is a critical factor. Delays in deciding to terminate a pregnancy may mean that a less invasive option is no longer available or that the option to terminate a pregnancy is no longer available.

3. Many people have deeply held religious and moral beliefs both supporting and opposing abortion, and the City respects the right of individuals to express and promote such beliefs.

4. In recent years, clinics that seek to counsel clients against abortion have become common throughout California. These clinics are often referred to as crisis pregnancy centers or limited services pregnancy centers. Although some of these centers (referred to herein as "LSPCs") are licensed to provide various medical services to pregnant women, most LSPCs are not licensed medical clinics.

5. Some LSPCs openly acknowledge, in their advertising and their facilities, that they do not provide abortions or access to emergency contraception or refer clients to other providers of such services. Some of these same LSPCs also openly acknowledge that they believe abortion is morally wrong. Many LSPCs, however, seek to mislead women contemplating abortion into believing that their facilities offer abortion services

and unbiased counseling. This misleading of women seeking medical advice and/or care has the potential to be extremely harmful to women.

6. The City respects the right of LSPCs to counsel against abortions, if the centers are otherwise operating in compliance with this Chapter, and the City does not intend by this Chapter to regulate, limit or curtail such advocacy.

7. The City has carefully balanced (1) the constitutionally protected right of a woman to choose to terminate her pregnancy, (2) the right of individuals to express their religious and ethical beliefs about abortion, (3) the serious harm to women that can result from even slight delays due to false advertising for pregnancy and/or abortion services, and (4) the cost to local taxpayers that can accrue from such delay, the City has determined that there exists a need to regulate false and misleading advertising by pregnancy clinics offering limited services.

8. There are several circumstances prompting the need for LSPC regulation that is more protective of potential consumers of pregnancy center services.

9. LSPCs often purchase "pay per click" ads on online search services such as Google for terms such as "abortion," so that persons searching for abortion services will see a link and advertisement for the LSPC at the top of the results page. In addition, many LSPCs advertise on billboards, mass-transit facilities, and through websites.

10. LSPCs often change their names, making it difficult for potential clients to do online research and find reviews of their services. Although the name of the LSPC organization may change, the entity does not, as evidenced by maintaining the same address and location, phone number, license number with the Department of Public Health and Federal Tax Identification number.

11. Most clients do not come to LSPCs as a result of a referral from a medical professional. Clients seeking information regarding options to terminate a pregnancy commonly experience emotional and physical stress and are therefore especially susceptible to false or misleading elements in advertising by LSPCs. These circumstances raise the need for regulation that is more protective of potential consumers of pregnancy center services.

12. Due to the time-sensitive and constitutionally protected nature of the decision to terminate a pregnancy, false and misleading advertising by clinics that do not offer or refer clients for abortion or access to emergency contraception is of special concern to the City. When a woman is misled into believing that a clinic offers services that it does not in fact offer, she loses time crucial to the decision whether to terminate a pregnancy. Under these same circumstances a client may also lose the option to choose a particular procedure, or to terminate the pregnancy at all.

13. The State of California recently recognized this problem and passed the Reproductive FACT Act, and in turn, LSPC proponents have filed suit for their right to withhold information from clients. In addition, there are several cities within California and many states across the Country seeking to address this issue.

14. Local tax dollars provide the financial support for local medical providers of last resort for indigent individuals who need medical care. These individuals include women facing unexpected pregnancies.

15. If women who have chosen to terminate a pregnancy are misled and delayed by the false advertising of LSPCs, the cost of providing more invasive and expensive options may fall upon health facilities funded by local taxpayers, which provide the medical services of last resort for the City's indigent population.

16. The City of Oakland has determined that there exists a need to regulate false and misleading advertising by pregnancy clinics offering limited services.

SECTION 2. Definitions. For the purposes of this Chapter, the following terms shall have the following meanings:

(a) "Abortion" shall mean the termination of a pregnancy for purposes other than producing a live birth. "Abortion" includes, but is not limited to, a termination using pharmacological agents.

(b) "Client" shall mean an individual who is inquiring about or seeking services at a pregnancy services center.

(c) "Emergency contraception" shall mean one or more prescription drugs (1) used separately or in combination, to prevent pregnancy, when administered to or self-administered by a patient, within a medically-recommended amount of time after sexual intercourse, (2) dispensed for that purpose in accordance with professional standards of practice, and (3) determined by the United States Food and Drug Administration to be safe for that purpose.

(d) "Health information" shall mean any oral or written information in any form or medium that relates to health insurance and/or the past, present or future physical or mental health or condition of a client.

(e) "Licensed medical provider" shall mean a person licensed or otherwise authorized under the provisions of federal, state, or local law to provide medical services.

(f) "Limited services pregnancy center" shall mean a pregnancy services center, as defined in subsection (g) below, that does not directly provide or provide referrals to clients for abortions and/or does not directly provide or provide referrals to clients for emergency contraception.

(g) "Pregnancy services center" shall mean a facility, licensed or otherwise, and including mobile facilities, the primary purpose of which is to provide services to women who are or may be pregnant, that either (1) offers obstetric ultrasounds, obstetric sonograms or prenatal care to pregnant women, or (2) has the appearance of a medical facility. A pregnancy service center has the appearance of a medical facility if two or more of the following factors are present:

- (A) The facility offers pregnancy testing and/or pregnancy diagnosis;
- (B) The facility has staff or volunteers who wear medical attire or uniforms;
- (C) The facility contains one or more examination tables;
- (D) The facility contains a private or semi-private room or area containing medical supplies and/or medical instruments;
- (E) The facility has staff or volunteers who collect health information from clients; or
- (F) The facility is located on the same premises as a state-licensed medical facility or provider or shares facility space with a state-licensed medical provider.

It shall be prima facie evidence that a facility has the appearance of a medical facility if it has two or more of the characteristics listed above.

(h) "Premises" shall mean land and improvements or appurtenances or any part thereof.

(i) "Prenatal care" shall mean services consisting of physical examination, pelvic examination or clinical laboratory services provided to a woman during pregnancy. Clinical laboratory services refers to the microbiological, serological, chemical, hematological, biophysical, cytological or pathological examination of materials derived from the human body, for purposes of obtaining information, for the diagnosis,

SECTION 3. Violation.

(a) It is unlawful for any limited services pregnancy center, with intent directly or indirectly to perform pregnancy-related services (professional or otherwise), to make or disseminate or cause to be made or disseminated before the public in the City, or to make or disseminate or cause to be made or disseminated from the City before the public anywhere, in any newspaper or other publication, or any advertising device or in any other manner or means whatever, including over the Internet, any statement, concerning those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, whether by statement or omission, that the limited services

pregnancy center knows or which by the exercise of reasonable care should know to be untrue or misleading.

(b) It is unlawful for any limited services pregnancy center, with intent directly or indirectly to perform pregnancy-related services (professional or otherwise), to make or disseminate or cause to be so made or disseminated any such statement identified in subsection (3)(a) as part of a plan or scheme with the intent not to perform the services expressly or impliedly offered, as advertised.

SECTION 4. Enforcement.

(a) The City Attorney may enforce the provisions of this Chapter through a civil action in any court of competent jurisdiction. Before filing an action under this Chapter, the City Attorney shall give written notice of the violation to the limited services pregnancy center. The written notice shall indicate that the limited services pregnancy center has ten (10) days in which to cure the false, misleading, or deceptive advertising. If the limited services pregnancy center has not responded to the written notice within ten (10) days, or refuses to cure the false, misleading, or deceptive advertising within that period, the City Attorney may file a civil action.

(b) The City Attorney may apply to any court of competent jurisdiction for injunctive relief compelling compliance with any provision of this Chapter and correcting the effects of the false, misleading, or deceptive advertising. Such an injunction may require a limited services pregnancy center to:

(1) Pay for and disseminate appropriate corrective advertising in the same forum as the false, misleading, or deceptive advertising.

(2) Post a notice on its premises, in a location clearly noticeable from the waiting area, examination area, or both, stating:

(A) Whether there is a licensed medical doctor, registered nurse, or other licensed medical practitioner on staff at the center; and

(B) Whether abortion, emergency contraception, or referrals for abortion or emergency contraception are available at the center.

(3) Be placed on a Violator's List with other Limited Services Pregnancy Centers in violation of this same Section.

(4) Such other narrowly tailored relief as the court deems necessary to remedy the adverse effects of the false, misleading, or deceptive advertising on women seeking pregnancy-related services.

(c) Upon a finding by a court of competent jurisdiction that a limited services pregnancy center has violated Section 93.4 of this Chapter, the City shall be entitled to recover civil penalties from each and every party responsible for the violation of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) per violation. In addition, if the City prevails it shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

(d) Nothing in this Chapter shall be interpreted as restricting or otherwise limiting the enforcement authority that state law or the Charter or Municipal Code vest in the City, its agencies, officers or employees or any state agency.

(e) Nothing in this Chapter shall be interpreted as creating a right of action for any party other than the City.

(f) Nothing in this Chapter shall be interpreted as restricting, precluding or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any court action to enforce the provisions of this Chapter.

SECTION 5. General Provisions.

(a) **Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

(b) **No Conflict with State or Federal Law.** Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(c) **Undertaking for the General Welfare.** In adopting and implementing this ordinance, the City of Oakland is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SECTION 6. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

Introduction Date

JUL 0 5 2016

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IN COUNCIL, OAKLAND, CALIFORNIA, July 19, 2016

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN,
REID AND PRESIDENT GIBSON MCELHANEY - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

Latonda Simmons
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: July 26, 2016