

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

AUTHOR: Michael P. May, City Attorney

DATED: March 12, 2014

TO THE MAYOR AND COMMON COUNCIL:

RE: BUFFER ZONE ORDINANCE

At the Council meeting on March 18, 2014, the Council will have before it a motion to reconsider the adoption of Sec. 23.01, MGO. This ordinance was adopted on February 25, 2014, and a motion to reconsider was made at the meeting on March 4, 2014, and referred to the meeting of March 18. It is commonly referred to as the Buffer Zone ordinance.

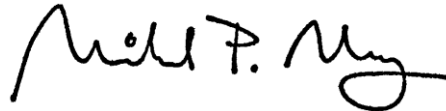
If the Council votes to reconsider the ordinance, we have prepared a Substitute, working with Alder Lisa Subeck. The Substitute does the following things:

1. Includes a short section on Findings and Purpose.
2. Adds the word "physically" to the subsection (23.01(2)(a)) on interfering with persons attempting to access health care facilities.
3. Changes the general zone from entrances to health care facilities from 160 feet to 100 feet. Within that zone, persons may not approach others without their consent to closer than 8 feet for the purposes described in the ordinance. This change brings our ordinance exactly in line with the ordinance approved by the U.S. Supreme Court in *Hill v. Colorado*. The *Hill* case was relied upon extensively by the federal court in its recent ruling in *Madison Vigil for Life, Inc., et. al v. City of Madison*, rejecting a request for a temporary restraining order against the version of the ordinance adopted on February 25.
4. Adds a shorter zone of 30 feet around a driveway entrance to health care facilities in order to protect those arriving by vehicle. This zone only applies if the 100 foot zone does not protect the driveway entrance.

5. Removes the provision that applied the ordinance to common areas in a multi-use building, and replaces it by applying the definition of entrance to all entrances in a multi-use building, if the health care facility doesn't have its own separate entrance.
6. Refines the definition of health care facility to make it a place where a physician or nurse practitioner routinely provides medical treatment. This should more narrowly tailor the application of the buffer zones.

The Substitute should be in Legistar. A red-lined version showing the changes made with the Substitute is attached to this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael P. May". The signature is fluid and cursive, with a large, stylized initial "M" and a distinct "P." in the middle.

Michael P. May
City Attorney

CITY OF MADISON, WISCONSIN

ANA
SUBSTITUTE
ORDINANCE

PRESENTED
REFERRED

January 21, 2014
BOHMDC; PSRC

Creating Section 23.01 and amending Section 1.08(3)(a) of the Madison General Ordinances to create a buffer zone at the entrance of health care facilities to protect patients from protestors and creates a bail schedule for violation thereof.

DRAFT

Drafted by: Kevin Ramakrishna, Michael May, Lara Mainella

Date: January 15 March 12, 2014

SPONSORS: Aids. Subeck, Ahrens, Bidar-Sielaff, Clausius, Clear, DeMarb Palm, Resnick, Rummel, Strasser, Weier, Verveer, Zellers

DRAFTER'S ANALYSIS: This substitute ordinance creates a protective zone within 460100 feet of the entrance to health clinics and 30 feet of the driveway entrance for a health clinic for patients to be allowed entry and exit without obstruction. Additionally, this ordinance will prevent anyone from actively approaching, to Within these zones, it is unlawful to intentionally approach a person without their consent, within eight feet, people intending to use the health clinic's service in order to engage in oral protest, education, counseling, passing of pass leaflets or handbills, or displaying display signs to the person. This ordinance also prohibits, generally, anyone from physically and intentionally hindering a person's entrance or exit from a health care facility. This ordinance also creates a bail schedule for this offense these offenses.

6

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.01 entitled "Prohibition on Obstructing Entryways to Health Clinics" of the Madison General Ordinances is created to read as follows:

"23.01 PROHIBITION ON OBSTRUCTING ENTRYWAYS TO HEALTH CLINICS.

(1) ~~Restrictions.~~ It shall be unlawful for any person to do any of the following:

(a) ~~Intentionally~~(1) Purpose and Findings: The Common Council recognizes that access to health care facilities for the purpose of obtaining medical counseling and treatment without interference is important to the residents of the City, and that the exercise of a person's right to speak for or against such counseling and treatment, including the right to protest or counsel against certain medical procedures, must be balanced against another person's right to obtain medical counseling or treatment in an unobstructed manner. Therefore, the Common Council finds that this ordinance is necessary to further the City's significant governmental interests in protecting citizens' rights to come and go from a health care facility.

(2) Restrictions. It shall be unlawful for any person to do any of the following:

Approved as to form:

Michael P. May, City Attorney

- (a) ~~Physically and intentionally obstruct, detain, hinder, impede, or block another person's entry to or exit from a health care facility.~~
- (b) ~~Intentionally approach another person to within eight (8) feet without consent for the purpose of doing any of the following on a public way or sidewalk area within a radius of one hundred sixty (160) feet from an entrance to a health care facility: either of the zones listed in sub. (c):~~
 - 1. ~~Pass a leaflet or handbill to the person.~~
 - 2. ~~Display a sign to the person.~~
 - 3. ~~Engage in oral protest, education or counseling with the person.~~
- (c) ~~Zones:~~
 - 1. ~~A radius of one-hundred (100) feet from an entrance to a health care facility.~~
 - 2. ~~A radius of thirty (30) feet from the point where the right-of-way intersects with the curbcut of any private driveway for the property upon which the health care facility is located, if any such point falls outside the zone in sub. (c)1.~~

(3) Definitions. In this section:

(a) ~~"Hhealth care facility" means a hospital, clinic or office that is place used by a licensed physician or nurse practitioner to routinely provide medical treatment. Where an office used by a health care facility is located in a multi-office building, the common areas of the entire building shall also be deemed a health care facility.~~

(b) ~~"Entrance" means a location of ingress and egress to a building. Where a health care facility is located in a multi-use or multi-office building and does not have a separate entrance, then the zone in (2)(c)1. applies to all entrances to the building.~~

(34) Penalty. -Violators Any person violating any provision of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1000)."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Obstruct entrance to health care clinics for purpose of protesting.	23.01	\$300, 1st \$500, 2 nd
<u>Prohibition on Obstructing Entryways to Health Clinics</u>		\$750, 3 rd and subsequent

EDITOR'S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.