



Legislation Text

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File #: CB 120399, Version: 1

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

COUNCIL BILL \_\_\_\_\_

AN ORDINANCE relating to limited services pregnancy centers; prohibiting false and misleading advertising by limited services pregnancy centers; and adding a new Chapter 7.32 to the Seattle Municipal Code. WHEREAS, on June 24, 2022, the U.S. Supreme Court issued a decision in *Dobbs v. Jackson Women’s Health*

*Organization* (No. 19-1392) overruling the constitutional right to an abortion established by *Roe v. Wade*, 410 U.S. 113, and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, and repudiating a constitutional right to privacy; and

WHEREAS, the majority opinion in *Dobbs* returns the issue of whether and to what extent to provide access to abortion to the states; and

WHEREAS, *The New York Times* estimates that after the *Dobbs* decision, with current and likely trigger laws banning abortions in up to 24 states, as many as 17 million persons capable of being pregnant would not have access to local abortion services; and

WHEREAS, the Guttmacher Institute has projected that after *Dobbs*, Washington State will see a 385 percent increase in persons traveling to the state to seek abortion services; and

WHEREAS, through Chapter 65, Laws of 2022, the State amended Revised Code of Washington (RCW) 9.02.120, declaring: “The state shall not penalize, prosecute, or otherwise take adverse action against an individual based on their actual, potential, perceived, or alleged pregnancy outcomes”; and

WHEREAS, clinics that seek to counsel clients against abortion have become common throughout Washington, with over 50 of them currently in operation, which is almost twice the number of full-service

reproductive health clinics. These clinics are often referred to as limited service pregnancy centers (LSPCs); and

WHEREAS, many studies and research efforts, including a July 2022 consumer advisory warning issued by Massachusetts Attorney General Maura Healey, have found that LSPCs provided false or misleading medical information. In June 2022 LSPC counselors in Texas told an NBC news team working undercover that abortions caused mental illness and implied that abortions could cause cancer and infertility; and

WHEREAS, in 2018 the King County Board of Health adopted Regulation No. 18-05, regulating the disclosure of information by LSPCs, requiring these facilities to publish on site and at their websites a notice stating, “This facility is not a health care facility.” However, an LSPC can subvert the intent of this regulation without making any change to the services it offers by hiring a staff member or members who are State-licensed, -certified, or otherwise authorized health care providers; and

WHEREAS, LSPCs often change their names, making it difficult for potential clients to do online research and find reviews of their services; and

WHEREAS, in 1984 The City of Seattle and King County entered into an interlocal agreement that outlined the administration, structure, and funding of a combined City and County Health Department, which was then called the Public Health Department and is now known as Public Health - Seattle & King County; and

WHEREAS, Ordinance 123668, establishing the 2011 interlocal agreement regarding Public Health - Seattle & King County, states, “The City has fiduciary and policy responsibility over its own financial contribution and strong and direct influence on overall policies of the Department which impact public health assessment and services in the City”; and

WHEREAS, restricting and/or denying access to abortion services will have a disproportionate impact on poor communities and Black, Indigenous, or people of color (BIPOC) communities; and

WHEREAS, the City recognizes that everyone has a fundamental right to bodily autonomy including transgender and gender diverse communities; and

WHEREAS, the City recognizes that transgender and gender diverse people with the capacity to become pregnant face increased barriers and stigma when accessing abortion services; and

WHEREAS, The City of Seattle values being an open, welcoming, and inclusive city of opportunity for all its residents, workers, and visitors; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. A new Chapter 7.32 is added to the Seattle Municipal Code as follows:

**Chapter 7.32 LIMITED SERVICES PREGNANCY CENTERS**

**7.32.010 Findings**

The City Council makes the following findings of fact and declarations:

A. The Reproductive Privacy Act, which was initiated by the people of Washington in 1991, affirms the fundamental right of persons in Washington to privacy with respect to personal reproductive decisions and proscribes the authority of the state to deny or interfere “with a pregnant individual’s right to choose or refuse to have an abortion.”

B. 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.

C. When an individual 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.

D. Although some limited service pregnancy centers (LSPCs) are licensed to provide various medical services to pregnant women, most LSPCs are not licensed medical clinics.

E. Facilities that are not medical clinics are not obligated to follow privacy standards such as exist under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, meaning that any personal

information LSPCs gather about clients could be used as evidence in civil or criminal cases about those who seek or facilitate access to reproductive health care services or the providers who offer these services.

F. Some LSPCs openly acknowledge, in their advertising and their facilities, that they do not provide abortions or 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.

G. A recent study concluded that the majority (60 percent) of LSPCs in Washington make false and/or biased claims on their websites.

H. Over half (51 percent) of LSPCs in Washington promote “abortion pill reversal,” a procedure that the American College of Obstetricians and Gynecologists calls “unethical” and “not based on science.”

I. 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.

J. 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 are experiencing 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.

K. Of LSPCs in Washington, 100 percent do not provide contraception, 98 percent do not provide well-person care, 95 percent do not provide prenatal care, and 49 percent do not provide referrals to prenatal care.

L. Because of the time-sensitive nature of the decision to terminate a pregnancy, false and misleading advertising by clinics that do not offer or refer clients for abortion or emergency contraception is of special

concern to the City. When an individual is misled into believing that a clinic offers services that it does not in fact offer, that individual 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.

M. The City respects the right of limited services pregnancy centers to counsel against abortions, if the centers are otherwise operating in compliance with this Chapter 7.32, and the City does not intend by this Chapter 7.32 to regulate, limit, or curtail such advocacy.

### **7.32.020 Scope and purpose**

This Chapter 7.32 applies to all limited service pregnancy centers that operate within The City of Seattle. This Chapter 7.32 is an exercise of the City's police power for the protection of the health, safety, and welfare of individuals seeking access to comprehensive reproductive care and is not intended to create, establish, or designate any particular class or group of persons who will be especially protected or benefited by its terms.

### **7.32.030 Definitions**

For the purposes of this Chapter 7.32:

“Abortion” means the termination of a pregnancy for purposes other than producing a live birth. This term includes, but is not limited to, a termination using pharmacological agents.

“Client” means an individual who is inquiring about or seeking services at a pregnancy services center, or who has already inquired about or sought such services.

“Clinical laboratory services” means the microbiological, serological, chemical, hematological, biophysical, cytological, and/or pathological examination of materials derived from the human body, for purposes of obtaining diagnostic information.

“Department” means the Department of Finance and Administrative Services, or successor entity, or designee.

“Director” means the Director of Finance and Administrative Services, or successor entity, or designee.

“Emergency contraception” means one or more prescription drugs (1) used separately or in combination, (a) to prevent pregnancy, (b) when administered to or self-administered by a patient, (c) within a medically recommended amount of time after sexual intercourse; (2) dispensed for that purpose in accordance with professional standards of practice.

“Health information” means any oral or written information in any form or medium that relates to health insurance and/or the past, present, or future mental or physical health or condition of a client.

“Limited services pregnancy center” or “LSPC” means a pregnancy services center that does not directly provide abortions or provide referrals to clients for abortions and/or does not directly provide referrals to clients for emergency contraception.

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

1. The facility offers pregnancy testing and/or pregnancy diagnosis;
2. The facility has staff or volunteers who wear medical attire or uniforms;
3. The facility contains one or more examination tables;
4. The facility contains a private or semi-private room or area containing supplies and/or medical instruments;
5. The facility has staff or volunteers who collect health information from clients; or
6. 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. For purposes of this definition,

“Premises” means land and improvements or appurtenances or any part thereof.

“Prenatal care” means services consisting of physical examination, pelvic examination, or clinical

laboratory services provided to an individual during pregnancy.

#### **7.32.040 Violations**

A. It is unlawful for any LSPC, with intent directly or indirectly to perform pregnancy-related services (professional or otherwise), including but not limited to prenatal care, 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/act connected with the proposed performance or disposition thereof which is untrue or misleading, whether by statement or omission, that the LSPC 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), including but not limited to prenatal care, to make or disseminate or cause to be so made or disseminated any such statement identified in subsection 7.32.040.A as part of a plan or scheme with the intent not to perform the services expressly or impliedly offered, as advertised.

#### **7.32.050 Enforcement and rulemaking**

The Director may adopt rules pursuant to Chapter 3.02 to implement the provisions of this Chapter 7.32. The Director is authorized to enforce, promulgate, revise, or rescind rules deemed necessary, appropriate, or convenient to administer the provisions of this Chapter 7.32, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 7.32.

#### **7.32.060 Enforcement - Notice of violation**

A. Investigation and notice of violation from the Director

1. The Director is authorized to investigate any LSPC that the Director reasonably believes has

not complied with the provisions of subsection 7.32.040.A.

2. If, after investigation, the Director determines that any provisions of subsection 7.32.040.A have been violated, the Director may issue a notice of violation to the LSPC responsible for the violation.

3. The notice of violation shall state (1) the provision or provisions violated and (2) necessary corrective action and the compliance due date.

4. The notice of violation shall be served upon the LSPC by personal service or regular first-class mail addressed to the last known address for the LSPC.

5. Nothing in this Section 7.32.060 limits or precludes any action or proceeding to enforce this Chapter 7.32, and nothing obligates or requires the Director to issue a notice of violation prior to the imposition of civil penalties.

6. Unless a request for review before the Director is made in accordance with subsection 7.32.060.B, the notice of violation shall become the final order of the Director.

#### B. Review by the Director

1. Any LSPC aggrieved by a notice of violation issued by the Director pursuant to subsection 7.32.060.A may obtain a review of the notice by requesting such review in writing within ten business days of the date of the notice. When the last day of the period so computed is a Saturday, Sunday, federal, or City holiday, the period shall run until 5 p.m. on the next business day. Within 15 business days of the request for review, the aggrieved LSPC may submit additional information in the form of written material to the Director for consideration as part of the review.

2. The review will be made by a representative of the Director who is familiar with the case and the applicable law. The Director's representative will review all additional written materials received by the deadline for submission of information. The reviewer may also request clarification of information received. After review of the additional information, the Director may:

- a. Sustain the notice of violation;



- b. Withdraw the notice of violation; or
- c. Continue the review to a date certain for receipt of additional information.

3. The Director shall issue an order of the Director containing the decision and shall cause the same to be mailed by first-class mail to the LSPC requesting the review.

4. The Director may grant an extension of time for compliance with any notice or order, whether pending or final, upon the Director's finding that substantial progress toward compliance has been made and that the public will not be adversely affected by the extension. An extension of time may be revoked by the Director if it is shown the conditions at the time the extension was granted have changed, the Director determines a party is not performing corrective actions as agreed, or if the extension creates an adverse effect on the public. The date of revocation shall then be considered the compliance date.

#### C. Penalties

1. In addition to any other sanction or remediable procedure that may be available, any LSPC violating or failing to comply with any provision of subsection 7.32.040.A shall be subject to the following penalties:

- a. \$500 per day for each violation for the first ten days; and
- b. \$1000 per day for each violation for each day beyond ten days of non-compliance until compliance is achieved.

2. In cases where the Director has issued a notice of violation or order of the Director, the violation will be deemed to begin, for purposes of determining the number of days in violation, on the date that compliance is required on the notice of violation or order of the Director.

3. Civil actions to enforce subsection 7.32.040.A shall be brought in the Seattle Municipal Court, except as otherwise required by law or court rule. The Director shall request in writing that the City Attorney take enforcement action. The City Attorney shall, with the assistance of the Director, take appropriate action to enforce subsection 7.32.040.A. In any civil action for a penalty, the City has the burden of proving by

a preponderance of the evidence that a violation exists or existed. The issuance of a notice of violation or an order following a review by the Director is not itself evidence that a violation exists.

4. Final decisions of the Seattle Municipal Court on enforcement actions authorized by Section 7.32.060 may be appealed pursuant to the Rules for Appeal of Courts of Limited Jurisdiction.

#### **7.32.070 Enforcement and penalties - Civil citation**

A. The Director is authorized to investigate any LSPC that the Director reasonably believes has not complied with the provisions of subsection 7.32.040.B.

B. If, after investigation, the Director determines that any provisions of subsection 7.32.040.B have been violated, the Director may issue a civil citation to the LSPC responsible for the violation.

C. The civil citation shall include the following information: (1) the name and address of the LSPC to whom the citation is issued; (2) the address of the LSPC involving the violation; (3) a separate statement of each provision violated; (4) the date of the violation; (5) a statement that the LSPC cited must respond to the civil citation within 15 business days after service; (6) a space for entry of the applicable penalty; (7) a statement that a response must be sent to the Hearing Examiner and received not later than 5 p.m. on the day the response is due; (8) contact information for the Hearing Examiner where the citation is to be filed; (9) a statement that the citation represents a determination that a violation has been committed by the LSPC named in the citation and that the determination shall be final unless contested as provided in this Chapter 7.32; and (10) a certified statement of the Director's representative issuing the citation, authorized by RCW 5.50.050, setting forth facts supporting issuance of the citation.

D. The citation shall be served by first-class mail, addressed to the LSPC responsible for the violation. Service shall be deemed complete three days after the mailing. If a citation sent by first class mail is returned as undeliverable, service may be made by posting the citation at a conspicuous place on the property where the violation occurred and service shall be complete on the date of posting. The citation may also be served in person.

E. Response to citations

1. An LSPC cited must respond to the citation in one of the following ways:

- a. Paying the amount of the monetary penalty specified in the citation, in which case the record shall show a finding that the LSPC cited committed the violation; or
- b. Requesting in writing a mitigation hearing to explain the circumstances surrounding the commission of the violation and providing an address to which notice of such hearing may be sent; or
- c. Requesting in writing a contested hearing specifying the reason why the cited violation did not occur or why the LSPC cited is not responsible for the violation, and providing an address to which notice of such hearing may be sent.

2. A response to a citation must be received by the Office of the Hearing Examiner no later than 15 calendar days after the date the citation is served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

3. If an LSPC fails to respond to a citation within 15 calendar days of service, the citation and monetary penalty shall be the final order of the Director.

F. Hearings

1. Mitigation hearings

a. If a mitigation hearing is requested, the mitigation hearing shall be held within 30 calendar days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing shall be sent to the address specified in the request for hearing not less than ten calendar days prior to the date of the hearing.

b. The Hearing Examiner shall hold an informal hearing that shall not be governed by the Rules of Evidence. The LSPC cited may present witnesses, but witnesses may not be compelled to attend. A representative from the Department may also be present and may present additional information, but attendance by a representative from the Department is not required.

c. The Hearing Examiner shall determine whether the cited LSPC's explanation justifies reduction of the monetary penalty. Factors that may be considered in whether to reduce the penalty include whether the violation was caused by the act, neglect, or abuse of another or whether compliance was prevented by a condition or circumstance beyond the control of the LSPC cited.

d. After hearing the explanation of the LSPC cited and any other information presented at the hearing, the Hearing Examiner shall enter an order finding that the LSPC cited committed the violation and assessing a monetary penalty in an amount determined pursuant to subsection 7.32.070.G. The Hearing Examiner's decision is the final decision of the City on the matter.

## 2. Contested hearings

a. Date and notice. If an LSPC requests a contested hearing, the hearing shall be held within 60 calendar days after the written response to the citation requesting such hearing is received.

b. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this Section 7.32.070. The issues heard at the hearing shall be limited to those that are raised in writing in the response to the citation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents.

c. No citation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the LSPC cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the LSPC cited.

d. A citation may be amended prior to the conclusion of the hearing to conform to the evidence presented if substantial rights of the LSPC cited are not thereby prejudiced.

e. The certified statement or declaration authorized by RCW 5.50.050 shall be prima

facie evidence that a violation occurred and that the LSPC cited is responsible. The certified statement or declaration authorized under RCW 5.50.050 and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any certifications or declarations authorized under RCW 5.50.050 shall also be admissible without further evidentiary foundation. The LSPC cited may rebut the Department of Finance and Administrative Services' evidence and establish that the cited violation(s) did not occur or that the LSPC contesting the citation is not responsible for the violation.

f. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the LSPC cited committed the violation and impose the applicable penalty pursuant to subsection 7.32.070.G. The Hearing Examiner may reduce the monetary penalty in accordance with the mitigation provisions in subsection 7.32.070.F.1.c. If the Hearing Examiner determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing the citation.

g. Final decision. The Hearing Examiner's decision is the final decision of the City.

3. Failure to appear for a requested hearing will result in an order being entered finding that the LSPC cited committed the violation stated in the citation and assessing the penalty specified in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear and schedule a new contested hearing date.

#### G. Citation penalties

1. The first time an LSPC is found to have violated one of the provisions referenced in subsection 7.32.040.B the LSPC shall be subject to a penalty of \$500. The Director may, in an exercise of discretion, issue a warning to the LSPC responsible for the violation if that LSPC has not been previously warned or cited for violating this Chapter 7.32.

2. Any second or subsequent time an LSPC is found to have violated one of the provisions referenced in subsection 7.32.040.B within a five-year period, the LSPC shall be subject to a penalty of \$1,000 for each subsequent violation.

3. If the LSPC cited fails to pay a penalty imposed pursuant to this subsection 7.32.080.G, the penalty may be referred to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty.

Alternatively, the City may pursue collection in any other manner allowed by law.

4. Each day an LSPC violates or fails to comply with one of the provisions referenced in Section 7.32.040, may be considered a separate violation for which a civil citation may be issued.

**7.32.080 Alternative criminal penalty**

Any LSPC that violates or fails to comply with any of the provisions in this Chapter 7.32 and that has had at least two or more citations, or two or more notices of violation issued against them for violating this Chapter 7.32, within the past three years from the date the criminal charge is filed shall be guilty of a misdemeanor subject to the provisions of Chapters 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request the City Attorney prosecute such violations criminally as an alternative to the citation and notice of violation procedures outlined in this Chapter 7.32.

**7.32.090 Additional relief**

The Director may seek legal or equitable relief to enjoin any acts or practices when necessary to achieve compliance.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2022, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved / returned unsigned / vetoed this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Bruce A. Harrell, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Elizabeth M. Adkisson, Interim City Clerk

(Seal)

Attachments: