



ORDINANCE COMMITTEE

COMMITTEE MEETING

~ MINUTES ~

Tuesday, September 20, 2022

3:00 PM

Sullivan Chamber
795 Massachusetts Avenue
Cambridge, MA 02139

The Ordinance Committee will hold a PUBLIC HEARING on Ordinance # 2022-16, Banning Limited Services Pregnancy Centers.

Attendee Name	Present	Absent	Late	Arrived
Burhan Azeem	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Dennis J. Carlone	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Alanna Mallon	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Marc C. McGovern	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Patricia Nolan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E. Denise Simmons	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Paul F. Toner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Quinton Zondervan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sumbul Siddiqui	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

A public meeting of the Cambridge City Council’s Ordinance Committee was held on Tuesday, September 20, 2022. The meeting was Called to Order at 3:00 p.m. by the Chair, Councillor McGovern. Pursuant to Chapter 20 of the Acts of 2022 adopted by Massachusetts General Assembly and approved by the Governor, this public meeting was hybrid, allowing participation in person, in the Sullivan Chamber, 2nd Floor, City Hall, 795 Massachusetts Avenue, Cambridge, MA and by remote participation via zoom.

Chair McGovern called the meeting to order. The call of the meeting was to hold a public hearing on Ordinance #2022-16, Banning Limited Services Pregnancy Centers.

City Clerk LeBlanc called the roll.

- Councillor Burhan Azeem – Present/In Sullivan Chamber
- Councillor Dennis J. Carlone – Absent
- Vice Mayor Alanna M. Mallon – Present/In Sullivan Chamber
- Councillor Marc C. McGovern – Present/Remote
- Councillor Patricia Nolan – Present/Remote
- Councillor E. Denise Simmons – Present/Remote
- Councillor Paul Toner – Present/Remote
- Councillor Quinton Y. Zondervan – Present/Remote
- Mayor Sumbul Siddiqui – Present/Remote

Present-8, Absent-1. Quorum established.

At the request of Chair McGovern, Clerk LeBlanc read the public hearing notice for the record.
The Chair, Councillor McGovern, opened the public hearing.

Minutes Acceptance: Minutes of Sep 20, 2022 3:00 PM (Committee Reports)

The following individuals all spoke in opposition of the proposed legislation.

Diane O'Toole, 120 Lincoln Street, Boston, MA
 Debby Dugan, 25 Hall Avenue, Watertown, MA
 Nate Bartholomew, 15 Fernald Drive, Cambridge, MA
 Colbe Mazzarella, 15 Horace Street, Somerville, MA
 John Heo, 1 Langdon Square, Cambridge, MA
 Myrna Maloney Flynn, 529 Main Street, Boston, MA
 Leslie Wood, 241 Northampton Street, Cambridge, MA
 Alexander Hughes, 10 DeWolfe Street, Cambridge, MA
 Lana Daniels, 9 Byron Street, Wakefield, MA
 Kathy Hill, 30 York Road, Mansfield, MA

There being no one else wishing to speak at the public hearing, the Chair, recognized Councillor Toner who made a motion to close public comment.

City Clerk LeBlanc called the roll.

Councillor Burhan Azeem – Yes
 Councillor Dennis J. Carlone – Absent
 Vice Mayor Alanna M. Mallon – Yes
 Councillor Marc C. McGovern – Yes
 Councillor Patricia Nolan – Yes
 Councillor E. Denise Simmons – Yes
 Councillor Paul Toner – Yes
 Councillor Quinton Y. Zondervan – No
 Mayor Sumbul Siddiqui – Yes
Yes-8, No-0. Absent-1. Motion passed.

The Chair first recognized the sponsors of the legislation Vice Mayor Mallon, followed by Councillor Zondervan. Both Councillors acknowledged the members of the public who offered comments and spoke to the need for the legislation being proposed.

The Chair recognized the City Solicitor Nancy Glowa to explain her response to Council Order No. O-7 of 6/27/22 Re: Report on the Proposed Banning Limited Services Pregnancy Centers Ordinance and to address additional questions posed by Councillors.

The Chair recognized Councillor Nolan, Councillor Toner, and Mayor Siddiqui for comments. The Chair, Councillor McGovern, also spoke on the matter.

Vice Mayor Mallon made a motion to adopt a policy order that the City Manager be and is hereby requested to direct the City Solicitor to reach out to the Law Department in

Somerville, MA to understand the legislation passed by the Somerville City Council banning limited services pregnancy centers.

City Clerk LeBlanc called the roll.

Councillor Burhan Azeem – Yes
 Councillor Dennis J. Carlone – Absent
 Vice Mayor Alanna M. Mallon – Yes
 Councillor Marc C. McGovern – Yes
 Councillor Patricia Nolan – Yes
 Councillor E. Denise Simmons – Yes
 Councillor Paul Toner – Yes
 Councillor Quinton Y. Zondervan – Yes
 Mayor Sumbul Siddiqui – Yes
Yes-8, No-0. Absent-1. Motion passed.

Councillor Zondervan made a motion to continue the public hearing to a future date to be noticed in accordance with the open meeting law.

City Clerk LeBlanc called the roll.

Councillor Burhan Azeem – Yes
 Councillor Dennis J. Carlone – Absent
 Vice Mayor Alanna M. Mallon – Yes
 Councillor Marc C. McGovern – Yes
 Councillor Patricia Nolan – Yes
 Councillor E. Denise Simmons – Absent
 Councillor Paul Toner – Yes
 Councillor Quinton Y. Zondervan – Yes
 Mayor Sumbul Siddiqui – Yes
Yes-8, No-0. Absent-1. Motion passed

The Ordinance Committee adjourned at approximately 4:18 p.m.

Attachments: Written testimony submitted during public comment.

City Manager Response to Council Order No. O-7 of 6/27/22 Re: Report on the Proposed Banning Limited Service Pregnancy Centers Ordinance.

Clerk's Note: The City of Cambridge/22 City View records every City Council meeting and every City Council Committee meeting. This is a permanent record. This is the link to this meeting:

https://cambridgema.granicus.com/player/clip/320?view_id=1&redirect=true&h=ddfda8fe9b15fa5baa358958688c74c4

All meetings are “closed captioned”. After each meeting the “closed captioned transcripts” are available online at: <https://app.box.com/s/9qormcahynjt4pzpt1n5opixogl3q7k5>

Please note that there is no editing of these “closed captioned transcripts” and they do not constitute a verbatim transcript prepared by a certified transcriber.

Banning Limited Services Pregnancy Centers (Ordinance #2022-16)

A communication was received from City Solicitor Nancy E. Glowa, transmitting response to Council Order No. 0-7 of June 27, 2022 Re: Report on the Proposed Banning Limited Services Pregnancy Centers Ordinance.

Minutes Acceptance: Minutes of Sep 20, 2022 3:00 PM (Committee Reports)



City of Cambridge

O-
FIRST IN COUNCIL
September 20, 2022

COUNCILLOR ZONDERVAN
VICE MAYOR MALLON
COUNCILLOR NOLAN
MAYOR SIDDIQUI
COUNCILLOR MCGOVERN

WHEREAS: It has come to the attention of the City Council that Somerville recently banned limited services pregnancy centers that present themselves as providing pregnancy related services but instead seek to persuade people against having an abortion; and

WHEREAS: Cambridge should join Somerville in ensuring that any such establishment operating within city limits with a primary purpose of providing services to clients who are or have reason to believe they may be pregnant, including mobile facilities, must either directly provide or provide referrals for abortions or emergency contraception; and

WHEREAS: While there do not seem to be any limited services pregnancy centers operating in Cambridge, several exist regionally including (but not limited to) Downtown Boston, Brighton, Brookline, Brockton, Lawrence, Quincy, Revere, and Natick; now therefore be it

ORDERED: That Chapter 5 of the Municipal Code be amended by inserting the following section:

ORDERED: That the City Manager be and here by requested to direct the City Solicitor to review the proposed Ordinance language and report back the City Council.

5.60 - Limited Services Pregnancy Centers

Finding of Facts

So called "Crisis Pregnancy Centers," which often present themselves as providing services to pregnant people, instead seek to persuade people against having an abortion. This practice is both deceptive and unwanted, and the City Council finds it necessary to prohibit such activities from being permitted in the City of Cambridge.

5.60.10 - Definitions

The following definitions shall apply to this article:

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

Client means an individual who is inquiring about or seeking services at a pregnancy services center.

Clinical laboratory services means the microbiological, serological, chemical, hematological, biophysical, cytological or pathological examination of materials derived from the human body for the purpose of obtaining information for the diagnosis, prevention or treatment of disease or the assessment of a health condition.

Emergency contraception means one or more prescription drugs: a) used separately or in combination for the purpose of preventing pregnancy; b) administered to or self-administered by a patient within a medically recommended amount of time after sexual intercourse; c) dispensed for such purpose in accordance with professional standards of practice; and, d) determined by the United States Food and Drug Administration to be safe for such purpose.

Health information means any oral or written information in any form or medium that relates to health insurance or the past, present or future physical or mental health or condition of a client. Licensed health care provider means a person licensed under the provisions of federal or state law to provide health care or other medical services.

Limited services pregnancy center means a pregnancy services center that does not directly provide, or provide referrals for, abortions or emergency contraception.

Pregnancy-related service means any medical or health counseling service related to pregnancy or pregnancy prevention, including, but not limited to, contraception and contraceptive counseling, pregnancy testing, pregnancy diagnosis, pregnancy options counseling, obstetric ultrasound, obstetric sonogram and prenatal care.

Pregnancy services center means a facility, including a mobile facility, the primary purpose of which is to provide services to clients who are or have reason to believe they may be pregnant and that either: a) offers obstetric ultrasounds, obstetric sonograms, pregnancy testing or diagnosis or prenatal care to pregnant clients, or; b) has the appearance of a medical facility by virtue of having two or more of the following factors present: (i) Staff or volunteers who wear medical attire and uniforms; (ii) one or more examination tables; (iii) a private or semiprivate room or area containing medical supplies or medical instruments; (iv) staff or volunteers who collect health information from clients; or (v) the facility is located on the same premises as a licensed health care facility or licensed health care provider or shares facility space with a licensed health care provider.

Prenatal care means services consisting of a physical examination, pelvic examination or clinical laboratory services provided to a client during pregnancy.

5.60.20 - Prohibition

The City Manager shall not issue any permits or licenses for Limited Services Pregnancy Centers that seek to prevent abortions.

5.60.30 - Deceptive practices.

No limited services pregnancy center, with the intent to perform a pregnancy-related service, shall make or disseminate before the public, or cause to be made or disseminated before the public, in any newspaper or other publication, through any advertising device, or in any other manner, including, but not limited to, through use of the Internet, any statement concerning any pregnancy-related service or the provision of any pregnancy-related service that is deceptive, whether by statement or omission, and that a limited services pregnancy center knows or reasonably should know to be deceptive.

5.60.040 - Enforcement.

The provisions of this article shall be enforced by a noncriminal disposition pursuant to Massachusetts General Laws Chapter 40, Section 21D. Each failure to comply with the requirements set forth in this Ordinance shall be deemed a separate offense.

History:
06/27/22 City Council

ORDER ADOPTED AS AMENDED

Minutes Acceptance: Minutes of Sep 20, 2022 3:00 PM (Committee Reports)



City of Cambridge

COF 2022 #112
IN CITY COUNCIL
September 20, 2022

Minutes Acceptance: Minutes of Sep 20, 2022 3:00 PM (Committee Reports)

Nancy E. Glowa
City Solicitor

Megan B. Bayer
Deputy City Solicitor

Elliott J. Veloso
First Assistant City Solicitor



Assistant City Solicitors
Paul S. Kawai
Diane O. Pires
Patrick C. Cento
Kate M. Kleimola
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka

Public Records Access Officer
Seah Levy

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

September 20, 2022

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Response to Council Order No. O-7 of 6/27/22 Re: Report on the Proposed Banning Limited Services Pregnancy Centers Ordinance.

Dear Mr. Huang:

This is in response to the above-referenced Council Order, which requests that the City Solicitor review the proposed Limited Services Pregnancy Centers Ordinance (the “Ordinance”), which would prohibit the establishment of Limited Services Pregnancy Centers (“LSPCs”) in the City. After review, it is my opinion that the Ordinance, if enacted, could constitute a content-based regulation of protected speech which could violate the First Amendment to the United States Constitution (“1st Amendment”) and Article 16 of the Massachusetts Declaration of Rights, as amended by Article 77 of the Amendments to the Massachusetts Constitution (“Article 16”).

The stated intent under the Ordinance would be for the City to prohibit the establishment of facilities within the City that seek to persuade citizens, under the guise of providing pregnancy services, against having abortions. To accomplish this, the Ordinance would (1) prohibit the issuance of any permit or license for LSPCs that seek to prevent abortions and (2) limit the content of oral and written statements LSPCs make in public forums. However, as noted above, the Ordinance, if enacted, could constitute an unconstitutional regulation of protected speech, which regulation is barred under both the U.S. and Massachusetts Constitutions. “[A] government, including a municipal government vested with state authority, ‘has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 163 (2015); quoting Police Dept. of Chicago v. Mosley, 408 U.S. 92, 95, (1972). Accordingly, an ordinance is deemed content based and subject to strict scrutiny where it seeks to regulate speech based on a topic discussed or an idea or message expressed. Massachusetts Coal. for the Homeless v. City of Fall River, 486 Mass. 437, 441 (2020); quoting Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 163 (2015) (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be

justified only if the government proves that they are narrowly tailored to serve compelling state interests.”), see also Showtime Ent., LLC v. Town Of Mendon, 472 Mass. 102, 107 (2015) (“The countervailing State interest cannot concern the content of the speech at issue, as that would impermissibly transform the restriction from content neutral to content based.”).

In the event of a legal challenge to the proposed Ordinance, if enacted, the City would have to demonstrate the constitutionality of the Ordinance showing that it furthers a compelling interest and is narrowly tailored to achieve that interest. Massachusetts Coal. for the Homeless v. City of Fall River, 486 Mass. 437, 442-43 (2020). An ordinance is narrowly tailored if it chooses the least restrictive means to further an articulated interest. Id. at 43. In this case, the articulated interest would be halting the dissemination of antiabortion views to persons seeking pregnancy services, in order to ensure that those seeking services are guaranteed an opportunity of holistic care. The City’s concerns stem from the argument that LSPCs are structured to appear as pregnancy healthcare services centers without an agenda when, in fact, they are solely focused on propagating an antiabortion agenda. However, the proposed Ordinance would likely be construed by a court as not narrowly tailored, given that it bans LSPCs from providing any services, even services that the majority of the City’s citizens might not find objectionable, because it seeks to prevent abortions.

The case of Framingham Clinic, Inc. v. Bd. of Selectmen of Southborough, 373 Mass. 279, 281-82 (1977) is instructive as to the legal difficulties the City would likely face if the Ordinance was enacted. In 1976, in the wake of Roe v. Wade, the Town of Southborough voted to amend its bylaws to prohibit “abortion clinics.” Id. at 281-82. The effect of the bylaw was to ban pregnancy clinics that offered abortion services while allowing pregnancy clinics that did not perform abortions. Id. at 284. In support of its bylaw amendment, Southborough argued that its regulation was consistent with the desires of its citizens and a clear expression of how they wished to regulate the use of land, buildings, and structures within their town. Id. at 282. In holding the Southborough regulation constitutionally invalid, the Supreme Judicial Court held that, “[t]he report of the Southborough planning board about public sentiment was...an irrelevancy, and a dangerous one, for that way would lie the extinction of many liberties which, are, indeed, constitutionally guaranteed against invasion by a majority.” Id. at 287. Current popular sentiment, in Cambridge, appears largely to be that the Supreme Court’s decision in Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2234 (2022), which overturned Roe v. Wade, was wrongly decided. In this case, the Ordinance could be perceived to be legislation in reaction to the Dobbs decision. For the same reason that, in 1976, Southborough could not eliminate clinics that provided abortion as a pregnancy service option, the City cannot seek to eliminate LSPCs that advocate against abortion as a pregnancy service option. By regulating LSPCs in such a manner that they are completely foreclosed from communicating their antiabortion message within Cambridge, the Ordinance would likely be found to violate the 1st Amendment. See Mendoza v. Licensing Bd. of Fall River, 444 Mass. 188, 201, (2005) (regulation may not unreasonably limit alternative avenues of communication); A.F.M., Ltd. v. City of Medford, 428 Mass. 1020, 1021, (1999) (“the city was obligated, as a practical matter, to ensure that its regulatory scheme did not unreasonably foreclose avenues for communication of the material the plaintiff intended to sell”).

Furthermore, the proposed Ordinance would likely be found to violate Article 16, which provides even greater protections for expressive activity than the 1st Amendment. Massachusetts Coal. for the Homeless v. City of Fall River, 486 Mass. at 440, citing Mendoza v. Licensing Bd.

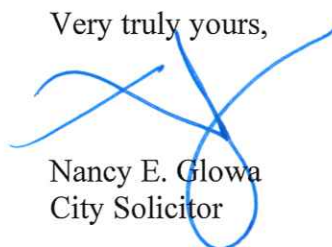
of Fall River, 444 Mass. 188, 201 (2005). Given that the proposed Ordinance would likely not pass federal constitutional muster, it necessarily follows that it would also likely not pass state constitutional muster were it challenged.

Additionally, the proposed Ordinance would prohibit the issuance of permits or licenses to LSPCs that seek to prevent abortions. This provision would likely not only be both overly broad and not “narrowly tailored to serve compelling state interests”; Reed v. Town of Gilbert, Ariz., supra; see also Showtime Ent., LLC v. Town Of Mendon, supra; but it would also be difficult to enforce because the City may not know prior to granting permits or licenses what role an LSPC would play in seeking to prevent abortions. Furthermore, this provision may be too broad because there are many permits and licenses that the City issues that may only be denied on the basis that an application does not meet certain statutory criteria, such as special permits and building permits. It is not permissible to deny those permits based on criteria outside of the scope of the statutory or regulatory scheme.

Finally, it should be noted that legal recourse and remedies under state law currently exist to deal with LSPCs that engage in deceptive and misleading practices. The Massachusetts Attorney General’s Office has issued guidance regarding how a citizen may file a civil rights complaint pertaining to such centers through the Civil Rights Division of the Attorney General’s Office. See <https://www.mass.gov/service-details/crisis-pregnancy-centers-cpcs>. G.L. c. 93A may also afford deceived persons recourse against LSPCs that provide false, misleading, and/or inaccurate information under the guise of providing comprehensive reproductive healthcare services or counseling.

In conclusion, the proposed Ordinance would likely be deemed an unconstitutional content-based restriction on protected speech in violation of the 1st Amendment and Article 16. As a result, the proposed Ordinance, if enacted and subsequently challenged, would be unlikely to survive the applicable strict scrutiny analysis that would be applied by a court of law.

Very truly yours,



Nancy E. Glowa
City Solicitor



City of Cambridge

O-
FIRST IN COUNCIL
October 3, 2022

COUNCILLOR ZONDERVAN
VICE MAYOR MALLON
COUNCILLOR NOLAN
MAYOR SIDDIQUI
COUNCILLOR MCGOVERN

WHEREAS: It has come to the attention of the City Council that Somerville recently banned limited services pregnancy centers that present themselves as providing pregnancy related services but instead seek to persuade people against having an abortion; and

WHEREAS: Cambridge should join Somerville in ensuring that any such establishment operating within city limits with a primary purpose of providing services to clients who are or have reason to believe they may be pregnant, including mobile facilities, must either directly provide or provide referrals for abortions or emergency contraception; and

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5.60.040 - Enforcement.

The provisions of this article shall be enforced by a noncriminal disposition pursuant to Massachusetts General Laws Chapter 40, Section 21D. Each failure to comply with the requirements set forth in this Ordinance shall be deemed a separate offense.

History:

06/27/22 City Council
09/20/22 Ordinance Committee

ORDER ADOPTED AS AMENDED



City of Cambridge

O-
FIRST IN COUNCIL
October 3, 2022

VICE MAYOR MALLON

ORDERED: That the City Manager be and is hereby requested to direct the City Solicitor to reach out to the Law Department in Somerville, MA to understand and report back to the Council on the legislation passed by the Somerville City Council banning limited services pregnancy centers.