

ORDINANCE NO. _____

An ordinance adding Section 28.30 to Article 8, Chapter II of the Los Angeles Municipal Code to establish the prohibition of misleading advertising by a pregnancy services center within the City of Los Angeles.

WHEREAS, a woman pregnant or believing she might be pregnant may seek services from a pregnancy services center. Those services might be pregnancy-related such as pregnancy testing, pregnancy diagnosis, obstetric ultrasounds, obstetric sonograms, or prenatal care. The services might also include options for emergency contraception or termination of a pregnancy, including surgical and non-surgical abortion;

WHEREAS, when a woman considers termination of a pregnancy, time is a critical factor. Delays in deciding to terminate a pregnancy might mean that a less invasive option is no longer available or that the option to terminate a pregnancy is no longer available. Emergency contraception can prevent pregnancy from occurring after unprotected sex or after birth control has failed, but must be taken within a short period of time after sex to be effective—generally within 72 hours. For women who intend to continue their pregnancies, obtaining early prenatal care reduces the risk of complications for both mother and baby. Women who do not get prenatal care or delay getting prenatal care are at greater risk for having undetected pregnancy complications that increase the risk of maternal or infant mortality, and their babies are more likely to have low birth weight or other complications. Therefore, it is critical that a woman timely select a pregnancy service center that meets her needs;

WHEREAS, many women do not come to a pregnancy services center as a result of a referral from a medical professional. Instead, women often select a pregnancy service center based on advertising procured by the center over the Internet, on billboards, radio, and television, and in printed media including newspapers and magazines. This is commercial speech that pregnancy service centers rely on to compete with other pregnancy service centers to attract women seeking assistance, including termination of pregnancy, emergency contraception, and prenatal care;

WHEREAS, some pregnancy service centers use false or misleading advertising to attract women contemplating terminating a pregnancy into believing that the center offers such services, even though it is not the center's business practice to provide the services or to refer a woman to another provider qualified to provide the services. Many pregnancy service centers that engage in such false or misleading advertising do not provide prenatal care;

WHEREAS, women seeking information regarding options to terminate a pregnancy may experience emotional and physical stress and are therefore especially susceptible to a pregnancy service center's false or misleading advertising;

WHEREAS, many pregnancy service centers offer “nondiagnostic” or “non-medical” ultrasounds, which may not detect fetal abnormalities, fetal distress, or other complications, or may be performed by persons unqualified to identify medical conditions that could affect a pregnancy. “Nondiagnostic” or “non-medical” ultrasounds may give pregnant women a false sense of security and cause them to delay seeking adequate prenatal care. Both the American College of Obstetrics and Gynecology and the American Institute of Ultrasound in Medicine discourage the use of non-medical ultrasounds to view or obtain images of a fetus;

WHEREAS, because of the time-sensitive nature of the decision to terminate a pregnancy or obtain emergency contraception, and the importance of timely access to prenatal care, false and misleading advertising by a pregnancy service center is of concern to the City. When a woman is misled into believing that a pregnancy service center offers services that it does not in fact offer, she loses time crucial to accessing emergency contraception, obtaining an abortion, or beginning prenatal care. Under these circumstances a woman might also lose the option to choose a particular procedure, or to terminate the pregnancy at all;

WHEREAS, if a woman is misled and delayed by false or misleading advertising from obtaining an abortion, emergency contraception, or prenatal care, the cost of providing more invasive and expensive options may fall upon local government, including the County of Los Angeles Health Department, which provides the medical services of last resort for the City's residents;

WHEREAS, California's False Advertising Law and Unfair Competition Law often prove inadequate to protect the interests of potential consumers of pregnancy center services as those laws require a private party to demonstrate financial harm in order to establish standing and provide private parties with limited remedies; and

WHEREAS, these circumstances raise the need for regulation that protects potential consumers of pregnancy center services. Importantly, the regulation in no way limits the right of anyone, including a pregnancy service center, to advocate or counsel against pregnancy termination, or to advertise in a non-false and misleading manner any service actually offered. It only regulates false or misleading commercial speech, including false or misleading speech in advertisements.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 28.30 is added to Article 8, Chapter II of the Los Angeles Municipal Code to read as follows:

SEC. 28.30. PROHIBITION OF MISLEADING ADVERTISING BY A PREGNANCY SERVICE CENTER.

(a) Definitions:

1. **Abortion Care:** shall mean any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

2. **City:** shall mean the City of Los Angeles.

3. **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.

4. **Pregnancy-Related Services:** shall mean services provided or offered to a person who is or may be pregnant, including any of the following: pregnancy testing, pregnancy diagnosis, obstetric ultrasounds, obstetric sonograms, or Prenatal Care.

5. **Pregnancy Services Center:** shall mean a facility, licensed or unlicensed, and including mobile facilities, the primary purpose of which is to provide services (professional or otherwise) including referrals to people who are or may be pregnant.

6. **Prenatal Care:** shall mean services consisting of physical examination, pelvic examination, or clinical laboratory services provided to a pregnant person. 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, prevention, or treatment of disease, or the assessment of health condition.

(b) Prohibited Activities. It is unlawful for any Pregnancy Services Center to make an advertising statement that a reasonable consumer would believe indicates that the Pregnancy Services Center provides Abortion Care, Emergency Contraception, Prenatal Care, or any other Pregnancy-Related Service, despite the Pregnancy Services Center not providing that service, or not making a timely referral to a qualified service provider both with respect to the consumer in question (in a private right of action), and as part of the Pregnancy Services Center's business practice.

1. **Disclaimers.** The presence of a disclaimer shall be relevant to determining whether an advertisement would likely mislead a reasonable consumer into believing that the Pregnancy Services Center provides Abortion Care, Emergency Contraception, Prenatal Care, or any other Pregnancy-Related Service. Among other things, the trier of fact shall evaluate the location of the disclaimer relative to the advertisement's affirmative statements, as well as the disclaimer's prominence, font size, and other characteristics, when determining whether the advertisement would likely mislead a reasonable consumer.

(c) **Civil Enforcement.** The City Attorney in the name of the People of the State of California or any aggrieved consumer of Pregnancy Service Center services may enforce the provisions of this section through a civil action in any court of competent jurisdiction. In an action brought by the People or an aggrieved consumer, the court, upon finding that a Pregnancy Services Center has violated any provision of this article, may:

1. Impose statutory penalties up to \$10,000 per violation, to be recovered from the Pregnancy Services Center and each and every person who has violated this section.
2. Order injunctive relief compelling compliance with any provision of this article and correcting the effects of false, misleading, or deceptive advertising.
3. Award restitution.
4. Award to a prevailing plaintiff reasonable attorneys' fees and costs.

In an action brought by an aggrieved consumer of Pregnancy Service Center services, the court may also award compensatory damages, punitive damages, or other compensation or relief as the court deems necessary to remedy the effects of the false, misleading, or deceptive advertising.

(d) **Nonexclusive Remedies and Penalties.** The remedies provided in this section are not exclusive, and nothing in this section shall be interpreted as restricting or otherwise limiting the enforcement authority that state law or the Charter or Los Angeles Municipal Code vest in the City, its agencies, officers, or employees, or any state agency, or as precluding an aggrieved Pregnancy Services Center consumer from seeking any other remedies provided by law. Nothing in this section 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 section.

(e) **Severability.** If any provision of this section is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this section which can be implemented

without the invalid provisions, and to this end, the provisions of this section are declared to be severable. The City Council hereby declares that it would have adopted this section and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

Sec. 2. Urgency. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: With the United States Supreme Court's adoption of its *Dobbs v. Jackson Women's health Organization* decision, the demand for Abortion Care, Emergency Contraception, Prenatal Care, and other Pregnancy-Related Services in Los Angeles from out-of-state residents is expected to increase quickly and substantially. According to a June 27, 2022 article published on npr.org, with twenty six states planning to ban or heavily restrict access to abortion, the closest abortion provider for 1.4 million out-of-state residents will now be in California. In a data brief released before the *Dobbs* decision, the UCLA School of Law's Center on Reproductive Health, Law, and Policy estimated that following the overturn of *Roe v. Wade*, between 8,000 and 16,100 more people would travel to California for abortion care each year, and that between 4,700 and 9,400 of those would come to Los Angeles County. Increased demand for abortion care risks creating a backlog of care for patients seeking a variety of pregnancy-related services, including prenatal care. This makes it all the more important that pregnant women are able to locate and connect with centers that provide the services they are seeking and do not lose valuable time as a result of false or misleading advertising. It is essential that the City take immediate action to prevent consumer injury resulting from false and misleading advertising.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
TIFFANY TEJEDA-RODRIGUEZ
Deputy City Attorney

Date 8/4/2022

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____