



Office of the Mayor

CONSENT CALENDAR  
December 12, 2023

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Susan Wengraf (Co-Sponsor), and Councilmember Sophie Hahn (Co-Sponsor)

Subject: The Right to Reproductive Freedom

RECOMMENDATION

Adopt a Resolution affirming the City of Berkeley's support to protecting the rights of those seeking reproductive care, receiving and offering reproductive care and abortion services, and deciding on their own bodily autonomy relating to their reproduction.

Refer to the City Manager to draft an ordinance that directs City agents and employees to ensure access to abortion sites and ensure access to information related to abortion access, including posting information about reproductive health on City property, as consistent with state and federal law.

BACKGROUND

The City of Berkeley has a well-established record of supporting women's rights<sup>1</sup>, reproductive health<sup>2</sup>, and creating a place for those in search of relief, support and care from their home communities.

In 1985, the City of Berkeley adopted a resolution in support of Roe v. Wade<sup>3</sup> and has reaffirmed that support annually. The City has continually endorsed state and federal legislation protecting and advancing reproductive rights, access to health care, and funds for preventative health care services.

Berkeley was the first U.S. city to become a sanctuary city, passing a resolution in 1971 to protect sailors resisting the Vietnam War<sup>4</sup>. On November 29, 2016, as attacks on the undocumented immigrant community rose, the City of Berkeley reaffirmed its status as

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<sup>1</sup> See Ordinance No. 7,224-N.S., adding Chapter 13.20 to the Berkeley Municipal Code Adopting the Operative Principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>2</sup> See Resolution No. 70,069-N.S.

<sup>3</sup> See Resolution No. 52, 558-N.S.

<sup>4</sup> See Resolution No. 44,784-N.S.

a sanctuary city<sup>5</sup>. On January 21, 2020, the City passed a resolution<sup>6</sup> to call on Congress to implement a new framework that expands public safety and protects human rights in border communities. There is existing precedent to continue the protections of our residents and visitors to meet the vulnerabilities of a changing social and political landscape.

### CURRENT SITUATION AND ITS EFFECTS

On June 24, 2022, the U.S. Supreme Court published their decision to overturn *Roe v. Wade*, rolling back the decades-long constitutional right to abortion. Without the highest court's protection for a right to choose, states have become the arbiters of a person's right to an abortion, effectively criminalizing abortion, threatening a person's bodily autonomy, limiting reproductive freedom, and restricting access to safe abortion care for millions.

Across the nation, multiple trends in State abortion laws have surfaced. 20 states have near-total abortion bans during any point in pregnancy or restrictions relative to when an abortion procedure can occur during pregnancy. With 25 states having created or expanded legal protections for abortion care, persons may be motivated to travel upwards of hundreds of miles to receive the care they seek in these states.

Abortion bans, in particular, disproportionately affect marginalized groups, with existing factors making them more likely to be uninsured or underinsured, causing abortion care, and the travel to receive care, to become considerably more expensive for these individuals. Additionally, the federal Hyde Amendment, an add-on to an approved congressional appropriations bill prohibiting federal funds from being used to pay for abortion care, disproportionately affects low-income people, and further restricts their access to abortion<sup>7</sup>. As such, millions enrolled in Medicaid do not receive coverage for their abortions, encouraging them to continue their pregnancies to term despite their desire for a different outcome. As 1 in 3 adults under the age of 65 on Medicaid has a disability, the federal Hyde restriction disproportionately keeps low-income people with disabilities from getting the abortion care they need<sup>8</sup>. States with the highest proportions of Black, Hispanic and Indigenous people, namely those from the South and Midwest, are more likely to have banned or attempted to ban abortion after the SCOTUS overturning *Roe v. Wade*<sup>9</sup>. Female-identifying persons are at a higher risk of health

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<sup>5</sup> See Resolution 67,763-N.S. Reaffirming Berkeley's Status as a City of Refuge. This was further refined with Resolution 68, 131-N.S. Amending of Refuge Policy Regarding Interaction with U.S. Immigration and Customs Enforcement.

<sup>6</sup> See Resolution No. 69,269-N.S. Condemning Trumps Illegal Assassinations and Act of War

<sup>7</sup> See: Maggie Jo Buchanan and Tracy Weitz, "Hyde's Restrictions on Abortion Are Unacceptable," Center for American Progress, August 5, 2022, available at <https://www.americanprogress.org/article/hydes-restrictions-on-abortion-are-unacceptable/>.

<sup>8</sup> See: Emily DiMatteo and others, "Reproductive Justice for Disabled Women: Ending Systemic Discrimination" (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/reproductive-justice-for-disabled-women-ending-systemic-discrimination/>.

<sup>9</sup> See: Katherine Gallagher Robbins and Shaina Goodman, "State Abortion Bans Could Harm Nearly 15 Million Women of Color" (Washington: National Partnership for Women and Families, 2022), available at <https://nationalpartnership.org/report/state-abortion-bans-harm-woc/>.

complications, pregnancy-related morbidity, and even death in states with abortion bans<sup>1011</sup>, demonstrating a lack of attention on systemic issues that cause gender-based harm and violence towards those who can get pregnant. Numerous legal battles are playing out across the country's courthouses as a result of these bans<sup>12</sup>.

Studies<sup>13</sup> show substantial increases in abortions in states bordering those states where abortion has been banned, with significant numbers of residents from states with bans traveling to neighboring states for abortion care. However, many healthcare professionals have become reluctant to help patients who travel from out-of-state for fear of litigation, threat to their medical license, or malicious persecution. Further, medical providers that honor their patients' personal decisions regarding their reproductive freedom and bodily autonomy can often receive death threats, challenging their ability to provide essential services.

These findings demonstrate that all aspects of abortion infrastructure – including facilities, funds and support networks – require sustained support to serve increased patient caseloads<sup>14</sup>. Increased privacy protections, legal protections, and resourcing can help increase the capacity of these service providers receiving an onslaught of care seekers.

Data sourced from our ever-present online lives—such as from applications that track a user's location, period-tracking applications, and social media platforms—can serve as evidence in lawsuits brought against both abortion patients and providers<sup>15</sup>. A general lack of cyber privacy protections, coupled with the increasing ubiquity of AI, threatens to exacerbate this risk. Without expanded protections, healthcare providers and those seeking abortion services in Berkeley, could have their location data collected and analyzed to determine whether they engaged in the delivery of abortion care.

The U.S. House of Representatives sought to increase protections for those crossing state lines through the passage of H.R. 8297<sup>16</sup>, prohibiting state officials from interfering with a person's ability to access an abortion, regardless of whether the patient lives out-of-state. While this bill was passed by the House on July 15, 2022, it did not pass the

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<sup>10</sup> See: Cecelia Lenzen, "Facing higher teen pregnancy and maternal mortality rates, Black women will largely bear the brunt of abortion limits," *The Texas Tribune*, June 30, 2022, available at <https://www.texastribune.org/2022/06/30/texas-abortion-black-women/>.

<sup>11</sup> See: Eugene Declercq and others, "The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions," *The Commonwealth Fund*, December 14, 2022, available at <https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes>.

<sup>12</sup> Mother and daughter in Nebraska were both charged with violating their state's abortion law, with the mother sentenced to two years in prison and her 17-year-old daughter to 90 days in jail. See: <https://www.nytimes.com/2023/09/22/us/jessica-burgess-abortion-pill-nebraska.html>

<sup>13</sup> See Guttmacher Institute: <https://www.guttmacher.org/2023/09/new-state-abortion-data-indicate-widespread-travel-care>.

<sup>14</sup> IBID.

<sup>15</sup> See NPR: <https://www.npr.org/2021/09/19/1038717122/a-texas-doctor-says-he-defied-the-abortion-law-risking-lawsuits>

<sup>16</sup> Source: U.S. Congress, [www.congress.gov/117/bills/hr8297/BILLS-117hr8297ih.pdf](http://www.congress.gov/117/bills/hr8297/BILLS-117hr8297ih.pdf)

Senate. H.R. 12, The Women's Health Protection Act of 2023<sup>17</sup>, was re-introduced<sup>18</sup> on March 30, 2023, prohibiting governmental restrictions on the provision of, and access to, abortion services, and is awaiting further action by the Senate.

In California, AB 1242<sup>19</sup>, authored by Assemblymember Rebecca Bauer-Kahan and signed into law by Governor Newsom on September 27, 2022, now requires out-of-state law enforcement agencies seeking data or records from California businesses to attest their investigation does not involve any crime related to an abortion that is legal under California law. Under AB 1242, state or local public agencies are effectively prohibited from cooperating with or providing information regarding a lawful abortion to an individual or agency from another state or a federal law enforcement agency.

Furthermore, in California, SB 345<sup>20</sup>, authored by Senator Skinner and signed into law by Governor Newsom on September 27, 2023, created a comprehensive shield law that provides legal protections for California healthcare professionals who provide or dispense medication, abortion, or contraception care to their patients who live in states where such care is illegal. Under SB 345, people who have traveled to or live in a state that has criminalized abortion will be able to receive treatment by a California healthcare provider via telehealth or videoconferencing, and have medication shipped to them from a participating California pharmacy. As long as they are physically in California, healthcare providers and pharmacies will receive legal protections from criminal and civil actions initiated in another state. In addition, SB 345 bars California-based social media and tech companies from disclosing to law enforcement any private communications of patients regarding healthcare that is otherwise legally protected in our state.

When compared to a six-month period in 2020<sup>21</sup>, over 13,240 (20%) additional abortions were performed in California between January to June 2023.<sup>22</sup> In August 2023, healthcare providers provided an estimated 88,400 procedures across the nation, with approximately 15,700 (17%) taking place in California.<sup>23</sup>

From 2020 to 2023, 568 residents from Berkeley received care from Planned Parenthood's Mar Monte site<sup>24</sup>, located nearly 50 miles away. These patients received a spectrum of services and treatment, including abortion, behavioral health, contraception, family medicine, gender-affirming care, pregnancy, STI treatment and testing, and general wellness care. Those from Berkeley who received care from Mar Monte include cisgender men, cisgender women, non-binary people, transgender men,

<sup>17</sup> Source: U.S. Congress, [www.congress.gov/118/bills/hr12/BILLS-118hr12ih.pdf](https://www.congress.gov/118/bills/hr12/BILLS-118hr12ih.pdf)

<sup>18</sup> Earlier versions introduced but failing to pass both Senate and House include: H.R. 8296 (117th) following the SCOTUS ruling, and H.R. 3755 (117th), shortly before the SCOTUS ruling.

<sup>19</sup> See AB 1242: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB1242](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1242)

<sup>20</sup> See SB 345: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB345](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB345)

<sup>21</sup> 2020 was the Guttmacher Institute's most recent Abortion Provider Census, used as a comprehensive point in time count

<sup>22</sup> Via formal U.S. healthcare systems. Source: Guttmacher Institute. <https://www.guttmacher.org/monthly-abortion-provision-study>.

<sup>23</sup> IBID.

<sup>24</sup> Source: Planned Parenthood, using data provided through patient addresses.

and transgender women, with the majority being cisgender women<sup>25</sup>. Most patients seen from Berkeley were Black, Pacific Islander and White<sup>26</sup>, with more than 80% of them living under 100% of the federal poverty line<sup>27</sup>. Nearly 60% of the patients were between the ages of 20-29. Abortion services are essential to providing comprehensive healthcare, allowing people the ability to participate equally in making the best health, economic, and social decisions for themselves. Abortion access requires the acknowledgement of full autonomy for a person to make their own decisions about their pregnancies, their families, and their own lives.

Despite the current lack of abortion facilities in Berkeley, the need to protect those seeking to fulfill their reproductive freedom and exercise bodily autonomy is ever present. Berkeley will never wane from its history of providing safety and sanctuary for all its residents and visitors. This resolution will take another step in providing protections and security for those in pursuit of reproductive freedom and bodily autonomy.

#### RATIONALE FOR IMPLEMENTATION

Without expanded protections, the City's residents, healthcare workers and visitors may be threatened by litigation in pursuit of fulfilling their right to reproductive freedom and privacy.

The City should continue its legacy of protecting those who are vulnerable to persecution, fulfilling the human rights of its residents and visitors, and promote reproductive freedom and right to choose what to do to their body and when to carry a pregnancy to term.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL, SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### CONTACT PERSON

Mayor Jesse Arreguín

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Anthony Rodriguez, Senior Legislative Assistant

#### Attachments:

1: Resolution

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<sup>25</sup> Self-identified.

<sup>26</sup> Self-identified.

<sup>27</sup> Self-identified.

RESOLUTION NO. ##,###-N.S.

RIGHT TO REPRODUCTIVE FREEDOM

WHEREAS, the Supreme Court's 2022 decision to overturn *Roe v. Wade* threatens a person's bodily autonomy and pursuit of reproductive freedom; and

WHEREAS, without the highest court's protection for a right to choose, states have become the arbiters of a person's right to an abortion, effectively criminalizing abortion and restricting access to safe abortion care for millions; and

WHEREAS, 20 states have near-total bans during any point in pregnancy, including restricting access to abortion care, and another 25 states have created or expanded their legal protections for abortion care among its residents and visitors; and

WHEREAS, studies show substantial increases in abortions in states bordering those with abortion restrictions, adding strain to the existing abortion care infrastructure; and

WHEREAS, abortion bans disproportionately affect marginalized groups, including low-income people, those receiving Medicaid, those with disabilities, Black, Hispanic and Indigenous people, and female-identifying persons; and

WHEREAS, abortion bans cause gender-based harm and violence towards those who are of child-bearing age; and

WHEREAS, the City of Berkeley acknowledges healthcare providers are vulnerable by the politicization of the care and services they provide for others, facing lawsuits, threats to their lives and the lives of their loved ones, and provocations undermining their integrity and ability to provide care; and

WHEREAS, many speculate the influence of AI and software in mobile applications that track a user's whereabouts can collect data that may be used to bring lawsuits against patients and healthcare providers fulfilling the right to abortion and reproductive care; and

WHEREAS, the U.S. House of Representatives has made multiple attempts to protect residents crossing state lines through H.R.8297 and H.R. 12; and

WHEREAS, the City of Berkeley acknowledges the significant progress the State has made to provide protections to those seeking and providing abortion services through the passage of AB 1242 and SB 345; and

WHEREAS, California has experienced an increase in abortions performed in the state since 2022 with over 17% of all abortions across the nation being conducted within California in the month of August; and

WHEREAS, nearly 600 Berkeley residents receive care from Planned Parenthood's Mar Monte site, treating a spectrum of gender identities, with the majority of patients identifying as Black, Pacific Islander or White, low-income, and within the ages of 20-29; and

WHEREAS, the City of Berkeley declares abortion services are an essential component of comprehensive healthcare, as they both allow individuals to make the best health, economic and social decisions for themselves and honor an individual's full autonomy to make their own decisions regarding their own pregnancies, their families and their bodies; and

WHEREAS, despite a lack of abortion facilities in the City of Berkeley, the need to protect those seeking to fulfill their reproductive freedom and exercise bodily autonomy is ever-present; and

WHEREAS, the City of Berkeley has a well-established record of supporting women's rights, reproductive health, and creating a place for those in search of relief, support and care; and

WHEREAS, the City of Berkeley was the first U.S. city to become a sanctuary city, and continues to be a haven for those in search of health, freedom and safety; and

WHEREAS, the City of Berkeley believes greater protections are needed for vulnerable groups crossing state lines to seek health care and family planning services, and exercising their right to privacy; and

WHEREAS, the City of Berkeley believes healthcare professionals have a right to dispense legal medical care, to not feel threatened for offering and providing abortion services, and deserve their right to privacy.

NOW THEREFORE BE IT RESOLVED by the City Council that it affirms a person's rights to reproductive freedom and privacy, and supports those seeking abortion care by:

1. Directing City agents and employees to ensure access to information related to abortion access, including posting information about reproductive health on City property.
2. Directing City agents and employees to immediately report any communication from out-of-state groups or government agencies, including requests for documents or warrants served to their site director or supervisor. The site director or supervisor must immediately notify the Department Director who must in turn immediately consult with the City Attorney about the appropriate course of action. .

3. Suggest keeping list of proposed City actions in similar format, i.e.: Directing City Agents and employees to refer City residents who inquire about their right to reproductive freedoms to local reproductive and gender rights organizations. A list of such organizations shall be compiled and then disseminated to relevant City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing prosecution or other adverse out-of-state actions.

BE IT FURTHER RESOLVED that the City of Berkeley will support a person's safety, in particular women of child-bearing age, maintaining their right to dictate their own health.

BE IT FURTHER RESOLVED that the City of Berkeley finds that reproductive justice, gender equality, gender equity, and bodily autonomy should be protected and reinforced, as a person's right to make decisions with regards to their own body is a matter of personal liberty and freedom.

BE IT FURTHER RESOLVED that the Council shall instruct the City Clerk to transmit copies of this resolution including any future amendments thereto that shall be made, to every department, agency and commission and employee of the City of Berkeley.