

# City of Salem

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*In the year Two Thousand and Twenty-Two*

**An Ordinance** to ensure safe access to legally protected reproductive and gender-affirming health care services

**Section 1.** Chapter 2 *Administration* is hereby amended by adding a new Article XVIII *Ensuring Safe Access to Reproductive Health Care*

“ARTICLE XVIII – ENSURING SAFE ACCESS TO LEGALLY-PROTECTED HEALTH CARE

Section 2-2064. Definitions

As used in this Article the definitions below apply to the following words and phrases:

‘Abusive litigation’, litigation or other action to deter, prevent, sanction or punish any person engaging in legally-protected health care activity that is: (i) filed or prosecuted in any state other than the commonwealth where liability, in whole or part, directly or indirectly, is based on legally-protected health care activity that occurred in the commonwealth, including any action in which liability is based on any theory of vicarious, joint or several liability derived therefrom; or (ii) an attempt to enforce any order or judgment issued in connection with any such action by any party to the action or any person acting on behalf of a party to the action; provided, however, that a lawsuit shall be considered to be based on conduct that occurred in the commonwealth if any part of any act or omission involved in the course of conduct that forms the basis for liability in the lawsuit occurs or is initiated in the commonwealth, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit

‘City agent’, any employee of the City of Salem, whether full time or part time, regular or seasonal, any intern or volunteer when acting on behalf of the City of Salem, any contractor for the City of Salem while a contract between the City of Salem and said contractor is in effect, and any recipient of City funding, grants, awards, or appropriations.

‘Gender-affirming health care services’, all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature relating to the treatment of gender dysphoria.

‘Legally-protected health care activity’, (i) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender affirming health care services secured by the constitution or laws of the commonwealth; or (ii) any act or

omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by the constitution or laws of the commonwealth, or to provide insurance coverage for such services; provided, however, that the provision of such a health care service by a person duly licensed under the laws of the commonwealth and physically present in the commonwealth, and the provision of insurance coverage for such services, shall be legally protected if the service is permitted under the laws of the commonwealth, regardless of the patient's location.

'Reproductive health care services', all supplies, care and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature relating to pregnancy, contraception, assisted reproduction, miscarriage management or the termination of a pregnancy.

#### Section 2-2065. Purpose

To ensure the city of Salem protects all individuals' access to legally protected health care services.

#### Section 2-2066. Preamble

Access to reproductive health care services and gender-affirming health care services is recognized and declared to be a right secured by the constitution and laws of the commonwealth. Interference with this right, whether or not under the color of law, is against the public policy of the commonwealth. The City of Salem, as a corporation of the commonwealth, has a responsibility to codify protections to ensure safe access to reproductive and gender-affirming health care services.

#### Section 2-2067. Policy

- (a) Information related to the provision of reproductive health care services or gender-affirming health care services for any person, including individuals who are not residents of the City of Salem or the Commonwealth of Massachusetts, held by any city agent in their capacity as a city agent shall be kept confidential and shall not be subject to the disclosure provision of the Public Records Law pursuant to G. L. c. 4, § 7(26)(c).
- (b) Acting in their capacity as a city agent, no city agent may furnish information, assistance, or aid to any person or jurisdiction for the purposes of prohibiting, criminalizing, sanctioning, authorizing a person to bring a civil action against, or otherwise interfering with a person, entity or carrier that seeks, receives, causes, aids in access to, aids or abets or provides, or attempts or intends to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally-protected health care activities. Additionally, no city resources, materials, or funds shall be so used.

- (c) No city agent may in their capacity as a city agent furnish information, assistance, or aid to any person or jurisdiction when such information, assistance, or aid is knowingly intended for use in abusive litigation as defined in this article. Additionally, no city resources, materials, or funds shall be so used.
- (d) No person, regardless of residency or citizenship status, shall be held in custody by the Salem Police Department for seeking, receiving, causing, aiding in access to, aiding or abetting or providing, or attempting or intending to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally-protected health care activities, except as required by the order of a court of competent jurisdiction. This restriction shall not apply to any investigation or proceeding where the conduct that is subject to potential liability under the investigation or proceeding initiated in or by the other State would be subject to civil or criminal liability or professional sanction under the laws of the Commonwealth if committed in this Commonwealth. Notwithstanding the general prohibition of this section, agencies and individuals acting on their behalf may provide information or assistance in connection with such an investigation or proceeding in response to the written request of a person who is the subject of such an investigation or proceeding.
- (e) Any person held in custody by the Salem Police Department shall not be remanded, transferred, or extradited to another jurisdiction for having sought, received, caused, aided in accessing, aided or abetted or provided, or attempted or intended to seek, receive, cause, aid in access to, aid or abet, or provide reproductive health care services or gender-affirming health care services, if such services are legally-protected health care activities, except as required by the order of a court of competent jurisdiction. This restriction shall not apply to any investigation or proceeding where the conduct that is subject to potential liability under the investigation or proceeding initiated in or by the other State would be subject to civil or criminal liability or professional sanction under the laws of the Commonwealth if committed in this Commonwealth. Notwithstanding the general prohibition of this section, agencies and individuals acting on their behalf may provide information or assistance in connection with such an investigation or proceeding in response to the written request of a person who is the subject of such an investigation or proceeding.

#### Section 2-2068. Violations

- (a) Any city employee found to have violated this article shall be subject to the progressive discipline policies of the City of Salem and any applicable fines pursuant to section 1-10 of this Code.

- (b) Any city contractor found to have violated this article shall be subject to review and potential termination of contract and any applicable fines pursuant to section 1-10 of this Code.
- (c) Any recipient of city funds found to have violated this article shall cease to receive any further city funds for a period of twelve (12) months from the violation and shall repay any city funds received between the date of the violation and twelve (12) months prior and any applicable fines pursuant to section 1-10 of this Code.

Section 2-2069. Severability

As provided in section 1-9 of this Code, the sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this article.”

**Section 2.** This Ordinance shall take effect as provided by City Charter.