

City of Easthampton

Final Ordinance, as passed by City Council on July 5, 2023

6-23 Safe and fair access to legally-protected reproductive and gender-affirming health care services.

6-23.1 Scope

Recognizing the importance and significance of access to Reproductive Health Care Services and Gender Affirming Health Care Services to the health, safety and welfare of the citizens of the City, this ordinance serves to provide municipal protections for access to legally protected Reproductive Health Care Services and Gender Affirming Health Care Services, and to prohibit City Agents except in limited circumstances enumerated herein, from assisting any individual, municipality, jurisdiction or state in litigation, prosecution, rendition or extradition of anyone who has received or pursued such services.

As recognized in M.G.L. c. 12 § 11I ½ access to reproductive health care services and gender-affirming health care services is 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 and of the City.

This ordinance is promulgated pursuant to the City's power to ensure the health, safety and welfare of the citizens and is intended to provide more stringent protections than those afforded by the Laws of the Commonwealth or the United States of America.

This ordinance mandates the City share all information promulgated and distributed by the Commonwealth regarding Reproductive Health Care Services and Gender Affirming Health Care Services. Such information serves to provide the public with an understanding of what are legally accessible and protected services, how to access those services, as well as any advisories from the Commonwealth pertaining to such services.

6-23.2 Definitions

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

“City” means the City of Easthampton, Massachusetts.

“City Agent” means any employee of the City, whether full time or part time, regular or seasonal, any intern or volunteer when or while acting on behalf of the City or any contractor for the City during the period of time any contract between the City and said contractor is legally operative or any recipient of City funds, funding, grants, awards, or appropriations.

“Client” means an individual who is inquiring about, seeking or receives services at a Pregnancy Services Center.

“Commonwealth” means the Commonwealth of Massachusetts.

Gender Affirming Health Care Services” means 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.

“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. This includes all HIPPA protected information.

“Legally-Protected Health Care Activity” means (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 under this Ordinance if the service is permitted under the laws of the Commonwealth, regardless of the patient’s location. And provided further, that “legally protected health care activity” shall not include any service rendered below an applicable professional standard of care or that would violate anti-discrimination laws of the commonwealth.

“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 an individual, entity or organization that in any way, provides or claims to provide any Pregnancy-Related Service but does not provide, and/or will not refer clients to providers of, any of the following services:

- (A) any FDA-approved contraceptive drug or device;
- (B) pregnancy testing;
- (C) obstetric ultrasound;
- (D) prenatal care;
- (E) abortion;
- (F) sterilization.

“Pregnancy-Related Service” means any medical or health counseling service in any way 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.

“Prenatal Care” means services consisting of a physical examination, pelvic examination or clinical laboratory services provided to a client during pregnancy by a Licensed Health Care Provider.

“Reproductive Health Care Services” mean, 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.

6-23.3 Safe Access to protected healthcare information

All information related to Reproductive Health Care Services or Gender-Affirming Health Care Services for any individual, including individuals who are not residents of the City or the Commonwealth, held by any City Agent is and shall be kept confidential by all City Agents and shall not be released or disclosed to any third party¹ absent the order of a court of competent jurisdiction.

No City Agent may furnish information, assistance, or aid, and no City resources, materials, or funds shall be used to facilitate or aid any person, entity or jurisdiction seeking to prohibit, criminalize, sanction, or bring or prosecute any criminal or civil action against, or otherwise interfere with any individual, 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.

Except as required by the order of a court of competent jurisdiction, no person, regardless of residency or citizenship status, shall be held in custody by the Easthampton Police Department solely 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, any person held in custody by the Easthampton Police Department shall not be remanded, transferred, renditioned or extradited to any other jurisdiction solely 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.

Notwithstanding the general prohibition of this section, City Agents may provide information or assistance in connection with such an investigation or proceeding in response to the written request of a person or entity who is the subject of such an investigation or proceeding.

¹ See e.g., M.G. L. c. 4, § 7(26)(c) or any other applicable exemption.

- a. All City Agents shall comply with any state regulation pertaining to reproductive and gender-affirming health care not otherwise explicitly stated in this Ordinance.

6-23.3.1 Violations

- a. Any employee of the City found to have violated this Ordinance shall be subject to the discipline policies of the City of Easthampton.
- b. Any contractor of the City found to have violated this Ordinance shall be deemed in default of such Contract, and shall thereafter be subject to the default provisions of same.

6-23.4 Fair Access to information

The City acknowledges that access to safe, legal, and transparent Reproductive Health Care Services and Gender Affirming Gender Affirming Health Care Services benefits the health, safety and welfare of the citizens and is in the interest of the City.

The City shall make available in writing or via electronic communications, information from the Commonwealth of Massachusetts that is relevant to accessing Reproductive Health Care Services and Gender Affirming Gender Affirming Health Care Services. This information may include information pertaining to Limited-Services Pregnancy Centers, entities performing reproductive services in the Commonwealth, as well as advisories, notices, or other general information that is relevant to reproductive and gender affirming health care.

The City shall notify the public of available resources concerning deceptive advertising regarding reproductive health care as noted in section 6-23.5

6-23.5 Reporting

- a. The Health Department shall post on its official City website, and other forms of City communications, any current or future consumer advisories issued by the Commonwealth related to Reproductive Health Care Services and Gender Affirming Gender Affirming Health Care Services. The Health Department shall also provide a link to [Sexual and Reproductive Health Care Locations](https://www.mass.gov/info-details/sexual-and-reproductive-health-service-locations)² from the Mass.gov website.
- b. The Health Department shall advise residents of the City of their right to file a consumer complaint regarding an LSPC or other reproductive health care. The form provided by the Office of the Attorney General Consumer Advocacy and Response Division shall be made available on the official City website and at City Hall through the health department or their designee.

6-23.6 Severability

² As of 5/9/23 <https://www.mass.gov/info-details/sexual-and-reproductive-health-service-locations>

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 unlawful or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this article which shall remain in full force.