

Ambulatory Surgical Facility (ASF) License

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753.01 PURPOSE AND FINDINGS.

(a) **PURPOSE.** The purpose of this Chapter is to establish reasonable regulations to promote the health, safety and welfare of the citizens of the City. It is also the purpose of this Chapter to establish reasonable regulations to preserve and protect maternal health while not placing an undue burden on a woman's right to an abortion.

(b) **FINDINGS.** Based on the evidence submitted at the public hearing before City Council on October 4, 1999, the public presentation by the Ohio Department of Health to City Council on October 18, 1999, information provided at other public meetings of City Council, and in all resulting written submissions in relation to this regulatory process, this City Council finds that:

- (1) The current State of Ohio Ambulatory Surgical Facility Licensing provisions and the enforcement thereunder are not protecting the health, safety and welfare of the citizens of the City; and
- (2) Cuyahoga County has no additional Ambulatory Surgical Facility Licensing regulations and has no enforcement authority for current State of Ohio Ambulatory Surgical Facility Licensing provisions; and
- (3) Local licensing regulation is needed to achieve the purposes set forth in Subsection (a) above.

753.02 DEFINITIONS.

As used in this Chapter:

(a) "ABORTION" means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo.

(b) "AMBULATORY SURGICAL FACILITY" or "ASF" means a facility whether or not a part of the same organization as a hospital, which is located in a building distinct from another in which inpatient care is provided, and to which any of the following apply:

- (1) Outpatient surgery is routinely performed in the facility and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists;
- (2) Anesthesia is administered in the facility by an anesthesiologist or certified registered nurse anesthetist and the facility functions separately from a hospital's inpatient surgical service and from the offices of private
- (3) The facility applies to be certified by the United States Health Care 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended;
- (4) The facility applies to be certified by a national accrediting body approved by the Health Care Financing Administration for purposes of deemed compliance with the conditions for participating in the Medicare program as an ambulatory surgical facility;
- (5) The facility bills or receives from any third-party payer, governmental health care program, or other person or government entity any ambulatory surgery facility fee that is billed or paid in addition to any fee for professional services;
- (6) The facility is held out to any person or government entity as an ambulatory surgical facility or similar facility by means of signage, advertising, or other promotional efforts.

"Ambulatory Surgical Facility" does not include a hospital emergency department.

(c) "DEPARTMENT" means the Department of Public Safety-Service of the City of Rocky River, Ohio.

(d) "DIRECTOR" means the Director of the Department of Public Safety-Service of the City of Rocky River, Ohio.

753.03 ASF LICENSE APPLICATION, FEES, REQUIREMENTS AND ISSUANCE.

(a) No ASF shall be established, maintained or operated within the city limits of the City of Rocky River without first obtaining a local license from the City by making an application to the Director and being issued a local ASF license from the Director.

(b) An application for a local ASF license shall be made on forms authorized and provided by the Director. The application shall include a copy of the ASF's State of Ohio License Application and a copy of the State of Ohio ASF license. The Director shall make a decision upon the application filed hereunder within ten (10) business days of his receipt of such application.

(c) An application fee of Thirty Dollars (\$30.00) shall accompany the initial application for a local ASF license for an ASF not performing abortions. An application fee of Three Hundred Dollars (\$300.00) shall accompany the initial application for a local ASF performing abortions. An annual renewal fee of Twenty-Five Dollars (\$25.00) shall be due and payable on or before January 1st of each year thereafter for a local ASF not performing abortions. An annual renewal fee of Two Hundred Fifty Dollars (\$250.00) shall be due and payable on or before January 1st of each year thereafter for a local ASF performing abortions. The difference in application fees and renewal fees is based in the Director's administrative obligations under Sections 753.09, 753.10 and 753.11 of this Chapter.

(d) An ASF doing business in the City is required to inform the Director of any change in its State of Ohio license status within seven (7) days of any such change.

(e) Notwithstanding anything to the contrary herein, no ASF shall be permitted to operate in the City if said ASF does not have a current State of Ohio ASF license in good standing.

753.04 EXPIRATION AND RENEWAL OF LICENSE.

(a) Each license issued pursuant to this Chapter shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than thirty (30) days before the expiration date. If application is made less than thirty (30) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(b) An application for renewal of a license shall be submitted to the Director on a form provided by the Director. The renewal application may request and the applicant shall provide the same information as set forth in Section 753.03 of this

Chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application. The completed renewal application shall be accompanied by copies of any document or material submitted in connection with the initial license application that has been revised or requires revision to reflect any change in circumstances or conditions.

(c) The Director shall make determinations concerning the approval of license renewals based on the same criteria used to evaluate applications for new licenses under Section 753.03 of this Chapter. The Director shall make a decision upon the renewal application filed hereunder within ten (10) business days of his receipt of such application.

(d) The Director shall advise the applicant in writing of the reason(s) for any denial of a license renewal.

(e) When the Director denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. If the Director finds, subsequent to denial, that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the denial was issued.

753.05 LICENSE SUSPENSION.

(a) The Director shall suspend an ASF license for a period not to exceed thirty (30) days if he determines that:

- (1) a licensee has violated or is not in compliance with any section of this Chapter; or
- (2) if a licensee's State of Ohio ASF license is suspended.

(b) The Director shall advise the licensee in writing of the reason(s) for any suspension.

753.06. LICENSE REVOCATION.

(a) The Director shall revoke an ASF license if a cause of suspension under Section 753.05 of this Chapter occurs and the license has been suspended two times within the preceding twelve (12) months.

(b) The Director shall revoke an ASF license if he determines that:

- (1) a licensee gave false or misleading information in the material submitted during the application process; or

(2) a violation(s) of Sections 753.08 or 753.09 has occurred; or

(3) a licensee's State of Ohio ASF license is revoked.

(c) The Director shall advise the licensee in writing of the reason(s) for any revocation.

(d) When the Director revokes a license, the licensee shall not be issued another license for one (1) year from the date the revocation became effective. If the Director finds, subsequent to revocation, that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

753.07. APPEAL RIGHTS.

(a) Any denial, suspension, or revocation of a new or renewal license under this Chapter may be appealed to the City of Rocky River Board of Zoning & Building Appeals by written notice within ten (10) days of such denial, suspension or revocation. Unless the applicant requests a longer period, the Board of Zoning & Building Appeals must hold a hearing on the appeal within thirty (30) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing.

(b) Any decision by the Board of Zoning and Building Appeals shall be a final appealable order and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this Chapter, the applicant or licensee shall provide written notice of such appeal to the Board of Zoning & Building Appeals in advance of or at the time of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board of Zoning & Building Appeals shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board of Zoning & Building Appeals and all other departments or agencies of the City shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

(d) Any applicant with a current State of Ohio ASF license at the time of the denial of a new local license or any local licensee with a current State of Ohio ASF license at the time of the denial of a local license renewal or at the time of a suspension or revocation of a local license, may continue to operate under said State license during the pendency of an appeal of a decision of the Director

rendered under this Chapter to the Board of Zoning & Building Appeals. However, nothing contained in this subsection shall prevent the City or the Director from seeking and/or obtaining an Order from a Court of competent jurisdiction to terminate the continued operation in the City under said State license during the pendency of such an appeal.

753.08. TRANSFER OF LICENSE.

An ASF license is not transferable from one licensee to another or from one location to another. Any purported transfer of an ASF license shall automatically and immediately revoke that license.

753.09. ASF'S LOCAL REPORTING REQUIREMENT.

As a condition precedent to maintaining a local ASF license issued under Section 753.03 above, or renewed under Section 753.04 above, an ASF performing abortions must submit copies of all State of Ohio reporting forms required by any state law, regulation and/or administrative code provision to the Director within seven (7) days of the required State of Ohio filing date for such reporting forms. Failure to provide a copy of any such reporting form to the Director shall be cause for license revocation under Section 753.06 above.

753.10. DIRECTOR'S RECORD COLLECTION, REVIEW AND ASSESSMENT.

For any ASF performing abortions in the City, the Director shall obtain from the Ohio Department of Health and/or the ASF the following documentation: inspection findings, complication records, waivers, complaint surveys, policy recommendations and other relevant data as to the operation of such ASF. The Director shall review this record collection along with the reporting forms required under Section 753.09 above and make an assessment as to whether any additional licensing provisions/requirements would be justified under this Chapter. The Director shall have authority to employ any professional assistance necessary to make the assessment set forth in this section.

753.11. DIRECTOR'S ANNUAL REPORT.

On an annual basis, or when significant findings warrant, the Director shall report the results of the assessment made under Section 753.10 above to the Mayor and to City Council.

753.12. INSPECTION COORDINATION.

The Director shall coordinate with the Ohio Department of Health to ensure that state inspections (announced or unannounced) of an ASF are performed in accordance with state law, regulations and administrative code provisions.

753.13. SEVERABILITY.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to that end the provisions of this Chapter are declared severable.

753.14. PENALTY.

(a) Any person who violates any provision of this Chapter shall be guilty of a misdemeanor of the first degree.

(b) Each day that an ASF operates in violation of this Chapter is a separate offense or violation.

753.15. INJUNCTION.

Any person who operates or causes to be operated an ASF in violation of any provision of this Chapter is subject to a suit for injunction as well as prosecution for any criminal violations under this Chapter.

(Ord. No. 94-99. Passed 3/13/00.)