

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 235 TO THE WRIGHT CITY, MISSOURI CODE OF ORDINANCES; REQUIRING COMPLIANCE WITH FEDERAL ABORTION LAWS; DECLARING WRIGHT CITY, MISSOURI, A SANCTUARY CITY FOR THE UNBORN

WHEREAS, Article I, Section 2 of the Constitution of Missouri provides that all persons have a natural right to life.

WHEREAS, the Missouri General Assembly has passed laws recognizing that “[t]he life of each human being begins at conception,” § 1.205.1(1) RSMo, “[u]nborn children have protectable interests in life, health, and wellbeing,” § 1.205.1(2) RSMo; and that “the laws of this state shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state,” § 1.205.2 RSMo.

WHEREAS, the Missouri General Assembly has declared the State and all of its political subdivisions to be a “sanctuary of life” that protects pregnant women and their unborn children.” *See* § 188.010, RSMo.

WHEREAS, the Supreme Court of the United States in *Poelker v. Doe*, 432 U.S. 519 (1977), opined that “the Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth” instead of abortion.

WHEREAS, federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia through the mail, an express service, a common carrier, or an interactive computer service, see 18 U.S.C. §§ 1461–62, and all such acts are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (RICO), see 18 U.S.C. § 1961.

WHEREAS, the Constitution and laws of Missouri do not and cannot secure a right, privilege or immunity to act in violation of federal criminal statutes such as 18 U.S.C. §§ 1461–62, or to engage in criminal or racketeering conduct as defined by federal law.

WHEREAS, the Mayor and Board of Aldermen are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified at 18 U.S.C. §§ 1461–62 are the “supreme Law of the Land” under Article VI of the Constitution and must be obeyed and respected by every person within the City of Wright City and by every judge in the state of Missouri. *See* U.S. Const. art. VI (“[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

WHEREAS, to preserve the safety, health, peace, good order, comfort, convenience, morals, and welfare of all inhabitants within the city of Wright City, and to ensure the federal prohibitions on the shipment of abortion pills and abortion-related paraphernalia are obeyed, the Board of Aldermen finds it necessary to enact this ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Aldermen of Wright City, Missouri, that the City of Wright City, Missouri, be declared to be a Sanctuary City for the Unborn—a city encouraging mothers to choose life and not abortion, while also enforcing laws to preserve the safety, health, peace, good order, comfort, convenience, morals, and welfare of all inhabitants within the City of Wright City, Missouri, both the born and the unborn, and that the Wright City, Missouri, Code of Ordinances be amended as follows:

SECTION 1: The Wright City Code is amended by adding Chapter 235 to read as follows:

CHAPTER 235

ABORTION

§ 235.001 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

(A) “Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:

(1) In vitro fertilization or fertility treatments of any type;

(2) The use, prescription, administration, procuring, or selling of Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

(3) An act performed with the purpose to:

(a) Save the life or preserve the health of the unborn child;

(b) Remove a dead unborn child caused by spontaneous abortion; or

(c) Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

(B) “Hospital” means an institution that is:

(1) Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services; and

(2) Duly licensed for this purpose under the laws of Missouri.

(C) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(D) “Medical emergency” means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(E) “Woman” and “women” include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

§ 235.002. - Compliance With Federal Abortion Laws Required.

(A) Except as provided by subsection (E), it shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

(1) Any article or thing designed, adapted, or intended for producing abortion;
or

(2) Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

(B) Except as provided by subsection (E), it shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

(1) Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion;

(2) Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (b)(1).

(C) Except as provided by subsection (E), it shall be unlawful for any person to violate 18 U.S.C. § 1531 by knowingly performing a partial-birth abortion that kills an unborn child.

(D) Except as provided by subsection (E), it shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18

U.S.C. § 1462 described in subsections (A) or (B), or the violations of 18 U.S.C. § 1531 described in subsection (C).

(E) This section shall not apply to any conduct taken by a hospital, or by any employees, agents, or contractors of a hospital, that is necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency.

(F) No provision of this section may be construed to prohibit any conduct protected by the First Amendment of the U.S. Constitution, as made applicable to state and local governments through the Supreme Court's interpretation of the Fourteenth Amendment, or by article 1, section 8 of the Missouri Constitution.

(G) Under no circumstance may the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(H) Any violation of this section is a municipal ordinance violation.

§ 235.003. - Severability.

(A) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Board of Aldermen that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

(B) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the Board of Aldermen's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

(C) The Board of Aldermen further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

(D) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional

vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

(E) No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would “rewrite” the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court’s decision. A judicial injunction or declaration of unconstitutionality:

(1) Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Missouri Constitution or United States Constitution;

(2) Is not a formal amendment of the language in a statute or ordinance; and

(3) No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(F) If any court, including any state or federal court, disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of city law, as if the Board of Aldermen had enacted a provision limited to the persons, group of persons, or circumstances for which the provision’s application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

PASSED this ___ day of _____, 2023 by ___ ayes, ___ nays, and ___ abstains.

APPROVED:

By: _____

ATTEST:

By: _____