

ORDINANCE NO. _____

ORDINANCE OUTLAWING ABORTION, DECLARING WILLEY A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF WILLEY, IOWA THAT:

A. FINDINGS

The City Council of Willey finds that:

1. Human life begins at conception.
2. Abortion is an act of violence that purposefully and knowingly terminates an unborn human life.
3. Unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings.
4. The City Council of Willey finds it necessary to outlaw abortion within city limits and defend the lives of its unborn residents to the maximum possible extent.

B. DECLARATIONS

1. We declare Willey, Iowa to be a Sanctuary City for the Unborn.
2. We declare that abortion at all times and at all stages of pregnancy is an unlawful act if performed in Willey, Iowa, unless the abortion was in response to 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.
3. We declare abortion-inducing drugs to be contraband, and we declare the possession and distribution of abortion-inducing drugs within city limits to be an unlawful act.

C. UNLAWFUL ACTS

Section 1. Definitions

The following terms are defined for use in this ordinance:

1. "Abortion" means the act of using or providing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include the use or provision of birth-control devices or oral contraceptives, and it does not include

the use or provision of Plan B, morning-after pills, or emergency contraception. An act is not an abortion if the act is done with the intent to:

- A. save the life or preserve the health of an unborn child;
- B. remove a dead, unborn child whose death was caused by accidental miscarriage; or
- C. remove an ectopic pregnancy.

2. "Abortion-inducing drugs" includes mifepristone, misoprostol, and any drug or medication that is used to terminate the life of an unborn child. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. The term also does not include drugs or medications that are possessed or distributed for a purpose that does not include the termination of a pregnancy, such as misoprostol that is possessed or distributed for the purpose of treating stomach ulcers.

3. "Unborn child" means a natural person from the moment of conception who has not yet left the womb.

Section 2. Abortion Prohibited

1. It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the city of Willey, Iowa.

2. It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the city of Willey, Iowa. The prohibition in this section includes, but is not limited to, the following acts:

- A. Knowingly providing transportation to or from an abortion provider;
- B. Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;
- C. Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;
- D. Providing or arranging for insurance coverage of an abortion;
- E. Providing "abortion doula" services;
- F. Providing referrals to an abortion provider; and
- G. Coercing or pressuring a pregnant woman to have an abortion.

3. It shall be an affirmative defense to the unlawful acts described in Subsections 1 and 2 if the abortion was in response to 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. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

4. No provision of this section may be construed to prohibit:

A. Speech or 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 7 of the Iowa Constitution;

B. Conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;

C. Conduct taken at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that conduct would violate the doctrines of preemption or intergovernmental immunity.

5. 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.

6. Each violation of this section shall be deemed a municipal infraction punishable by a fine of \$500. In addition, the City may maintain an action for injunctive relief to stop such prohibited activities.

Section 3. Abortion-Inducing Drugs Prohibited

1. Abortion-inducing drugs are declared to be contraband in the city of Willey, Iowa.

2. Except as provided by Subsection 3, it shall be unlawful for any person to:

A. Possess or distribute abortion-inducing drugs in the city of Willey, Iowa; or

B. Mail, transport, deliver, or provide abortion-inducing drugs in any manner to or from any person or location in the city of Willey, Iowa.

3. Subsection 2 does not prohibit:

A. Speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the Supreme Court of the United States' interpretations of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 7 of the Iowa Constitution;

- B. Conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;
- C. The possession or distribution of abortion-inducing drugs for a purpose that does not include termination of a pregnancy; and
- D. The possession of abortion-inducing drugs resulting from an effort to entrap individuals or entities that violate this section; and
- E. Conduct taken at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that conduct would violate the doctrines of preemption or intergovernmental immunity.

4. Each violation of this section shall be deemed a municipal infraction punishable by a fine of \$500. In addition, the City may maintain an action for injunctive relief to stop such prohibited activities.

Section 4. Severability

1. 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 city that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance to every person, group of persons, or circumstances, are severable from each other.
2. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid, preempted, unconstitutional, or to impose an undue burden on any woman or group of women seeking an abortion, 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 ordinance, and every application of those provisions that can be enforced without imposing an undue burden on women seeking abortions, shall be severed from any applications that a court finds to be invalid, preempted, unconstitutional, or to impose an undue burden on women seeking abortions, and the valid applications shall remain in force, because it is the city's intent and priority that every valid application be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the city had enacted an ordinance limited to the persons, group of persons, or circumstances for which the ordinance's application does not impose an undue burden.

3. The city further declares that it would have enacted this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance were to be declared invalid, preempted, unconstitutional, or to impose an undue burden.

4. If any provision of this ordinance 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 1, 2, and 3.

5. No court may decline to enforce the severability requirements of Subsections 1, 2, 3, and 4 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 official from enforcing a statutory provision does not rewrite an ordinance, as the ordinance continues to contain the same words as before the court's decision.

A judicial injunction or declaration of unconstitutionality:

A. 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 Iowa Constitution or United States Constitution;

B. is not a formal amendment of the language in an ordinance; and

C. no more rewrites an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

6. If any state or federal court disregards the severability requirements of Subsections 1, 2, 3, 4, or 5, and declares or finds any provision of this ordinance facially unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal law, the federal or state constitutions, or imposing an undue burden on women seeking abortions, then that provision shall be interpreted, as a matter of city law, as if the city had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law, the federal or state constitutions, or impose an undue burden on women seeking abortions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially unconstitutional is vacated or overruled.

D. EFFECTIVE DATE

This ordinance shall go into immediate effect upon a majority vote within the Willey, Iowa City Council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

PASSED AND APPROVED by the City Council of the City of Willey, Iowa, this _____th day of _____, 2022.

CITY COUNCIL OF THE
CITY OF WILLEY, IOWA

BY: _____

Mayor of Willey, Iowa

ATTEST:

By: _____

City Clerk of Willey, Iowa