CITY OF PLAINS, TEXAS

ORDINANCE NO. _____

ORDINANCE OUTLAWING ABORTION, DECLARING PLAINS 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 PLAINS, TEXAS, THAT:

A. FINDINGS

The City Council finds that:

(1) Thomas Jefferson was right when he said to Maryland Republicans in 1809, *"The care of human life and happiness and not their destruction is the first and only legitimate object of good government."*

(2) Human life begins at conception.

(3) Abortion is a murderous act of violence that purposefully and knowingly terminates an unborn human life.

(4) Unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings.

(5) Abortion-inducing drugs are being mailed into communities across Texas from unregulated abortion pill trafficking organizations outside of the State of Texas. The taking of these drugs, which exist for the purpose of terminating the life of an unborn child, have also resulted in adverse events which have left some women seeking emergency medical care.

(6) Abortion-traffickers are taking pregnant mothers across state lines to abortion facilities in New Mexico, Colorado, Kansas, and other abortion access states. After the abortion, these women are sent back to Texas where communities are forced to deal with the aftermath in their homes, schools, churches, and hospitals.

(7) In addition to the life-affirming services which are already being provided by organizations in Yoakum County, the Thriving Texas Families program (also known as the Texas Alternatives to Abortion program) is in place, which promotes childbirth and provides support services to pregnant mothers and their families, adoptive parents, and parents whose lives have been affected by miscarriage or loss of a child. The services provided as part of the Thriving Texas Families program include: counseling, mentoring, educational information and resources including classes on pregnancy, parenting, adoption, life skills and employment preparedness; material assistance covering basic needs, such as car seats, clothing, diapers, and formula; care coordination help through referrals to government assistance programs and other social services programs; call center for information and appointment scheduling; and housing and support services through maternity homes. The program is available to any Texas resident who is: a pregnant woman; the biological father of an unborn child; the biological parent of a child who is 36 months of age or younger; an adoptive parent of an unborn child; an approved adoptive parent of an unborn child; a former participant who has experienced the loss of a child; a parent or legal guardian of a pregnant minor who is a program client; the parent, legal guardian, or adult caregiver of a child who is 36 months of age or younger; and a parent who experienced a miscarriage or loss of a child not more than

90 days before the parent begins participation in the services offered through the program. *See* Tex. Health and Safety Code § 54.004. More information about how one can benefit from these services made possible by the Thriving Texas Families Program is available at the *Texas Pregnancy Care Network* website at www.texaspregnancy.org or *The Pregnancy Network* website operated by Human Coalition at www.thepregnancynetwork.clinic.

(8) The Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, correctly overruled the Court's lawless and unconstitutional pronouncements in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which had invented and perpetuated a supposed constitutional right to abortion that cannot be found anywhere in the language of the Constitution.

(9) The ruling in *Dobbs* restores the prerogatives of state and local governments to regulate and prohibit abortion as they see fit.

(10) During the 86th Legislative Session, the State of Texas prohibited any political subdivision in the State of Texas from using taxpayer dollars to fund any abortion provider or any affiliate of an abortion provider. In the prohibition the State Legislature made clear that the law may not be construed to restrict a municipality or county from prohibiting abortion. *See* Tex. Gov't Code § 2273.005. (*"This chapter may not be construed to restrict a municipality or county from prohibiting abortion."*).

(11) During the 87th Legislative Session, the State of Texas explicitly allowed municipalities and counties to outlaw and prohibit abortion, and to establish penalties and remedies against those who perform or enable unlawful abortions. *See* Tex. Gov't Code § 311.036(b) (*"A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute."*)

(12) At the time of the consideration of this ordinance, over eighty cities in Texas have passed Sanctuary City for the Unborn Ordinances. Over thirty of those cities are Type A General Law cities. Speaking of Type A General Law cities, Local Gov't Code § 51.012 states, *"The municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic."* None of the ordinances passed in these Type A General Law cities were *"inconsistent with state law"* but all were viewed as *"necessary for the government, interest, welfare, or good order of the municipality as a body politic."*

(13) Federal law imposes felony criminal liability on every person who ships or receives abortion pills or abortion-related paraphernalia in interstate or foreign commerce, *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.

(14) The members of the city council 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 Plains. *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.").

(15) To protect the health and welfare of all residents within the city of Plains, including the

unborn, and to ensure the federal prohibitions on the shipment of abortion pills and abortion-related paraphernalia are obeyed, the city council finds it necessary to outlaw abortion within the city of Plains. *See* Tex. Gov't Code § 2273.005; *and* Tex. Gov't Code § 311.036(b).

B. DECLARATIONS

(1) We declare Plains 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, unless the abortion is performed to save the life of the pregnant woman in a medical emergency.

(3) Abortion-inducing drugs are declared to be contraband, and it shall be unlawful for any person to manufacture, possess, or distribute abortion-inducing drugs in the city of Plains.

(4) We call upon every United States Attorney in the state of Texas, both present and future, to investigate and prosecute abortion providers and abortion-pill distribution networks under 18 U.S.C. §§ 1461–62 and the Racketeer Influenced and Corrupt Organizations Act (RICO);

(5) We encourage all victims of abortion providers and abortion-pill distribution networks, including the mothers, fathers, and surviving relatives of aborted unborn children, to sue these racketeering enterprises under civil RICO.

(6) We call upon district attorneys throughout the state of Texas to investigate and prosecute all Texas abortion funds and their donors that have aided or abetted abortions in Texas in violation of article 4512.2 of the Revised Civil Statutes, which imposes felony criminal liability on any person who "furnishes the means for procuring an abortion knowing the purpose intended."

C. PROVISIONS

SECTION 1: DEFINITIONS

For the purposes of this chapter, the following terms are hereby defined:

(1) "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:

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

(B) 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

(C) An act performed with the purpose to:

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

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

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

(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:

(A) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

(B) 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) “Abortion doula services” include acts that aid or abet abortions by providing informational, logistical, emotional, or physical support that would make someone an accomplice to abortion under the principles of complicity set forth in section 7.02 of the Texas Penal Code. The term does not include:

(A) The provision of truthful information regarding the availability of abortion services that are legally permitted under the law of the jurisdiction in which they offered; or

(B) The provision of emotional support to a woman who has completed an abortion.

(4) “Abortion fund” means a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity that exists for the purpose of aiding or abetting elective abortions, and that pays for, reimburses, or subsidizes in any way the costs associated with obtaining an elective abortion.

(5) “Abortion provider” means a person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity that performs elective abortions.

(6) “Affiliate” means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(A) common ownership, management, or control between the parties to the relationship;

(B) a franchise granted by the person or entity to the affiliate; or

(C) the granting or extension of a license or other agreement authorizing the affiliate to use the other person’s or entity’s brand name, trademark, service mark, or other registered identification mark.

(7) “Conduct that aids or abets an elective abortion” includes but is not limited to, the following acts:

(A) 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 or self-managed abortion or the means of obtaining elective abortions, regardless of where the person giving the instructions is located;

(C) Creating, editing, uploading, publishing, hosting, maintaining, or registering a

domain name for a website, platform, or other interactive computer service that assists or facilitates efforts to obtain elective abortions;

(D) Creating, editing, programming, or distributing any application or software for use on a computer or electronic device that is intended to enable individuals to obtain elective abortions or to facilitate access to such abortions;

(E) Offering or providing money, digital currency, or other resources with the knowledge that it will be used to pay for, offset, or reimburse the costs of an abortion or the costs associated with procuring an abortion, including any type of donation to an abortion provider or abortion fund that performs or aids or abets abortions;

(F) Offering, providing, or lending money, digital currency, resources, or any other thing of value to an abortion provider, an abortion fund, or an affiliate of an abortion provider or abortion fund;

(G) Performing or providing any type of work or services for an abortion provider or abortion fund, regardless of whether such work or services is done on a paid, contract, or volunteer basis;

(H) Paying, offering to pay, or providing insurance that covers the legal expenses or court judgments or settlements of those who perform or assist elective abortions;

(I) Providing or arranging for insurance coverage of an elective abortion; (J) Offering or providing "abortion doula" services for an elective abortion;

(K) Providing referrals to an abortion provider for a woman seeking an elective abortion;

(L) Coercing or pressuring a pregnant woman to have an abortion against her will; and

(M) Engaging in any conduct that would make one an accomplice to an elective abortion under the principles of complicity set forth in section 7.02 of the Texas Penal Code.

(8) "Elective abortion" means any abortion that is not performed or induced in response to a medical emergency.

(9) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(10) "Governmental entity" means this state, a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this state.

(11) "Human being" means an individual member of the species Homo sapiens at any stage of development beginning at fertilization;

(12) "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.

(13) "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.

(14) “Unborn child” means an individual organism of the species Homo sapiens in any stage of gestation from fertilization until live birth;

(15) “Woman” and “women” include (but are not limited to) 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 attempts to assert or claim.

SECTION 2: ABORTION PROHIBITED WITHIN CITY LIMITS

(a) It shall be unlawful for any person to procure or perform an elective abortion of any type and at any stage of pregnancy in the city of Plains, Texas. The prohibition in this section extends to drug-induced abortions in which any portion of the drug regimen is ingested in the city of Plains, Texas, and it applies regardless of where the person who performs or procures the abortion is located.

(b) It shall be unlawful for any person to knowingly engage in conduct that aids or abets an elective abortion if the abortion is performed in violation of subsection (a), regardless of whether the person knew that the abortion would be performed in violation of subsection (a).

(c) Notwithstanding any other law, subsections (a) and (b) do not prohibit:

(1) abortions performed or induced in response to a medical emergency, or any conduct that aids or abets or attempts to aid or abet such abortions;

(2) 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 8 of the Texas Constitution;

(3) conduct that the city of Plains is forbidden to regulate under federal law or the Constitution of the United States;

(4) conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;

(5) The provision of basic public services, including fire and police protection and utilities, by a governmental entity or a common carrier to an abortion provider, an abortion fund, or an affiliate of an abortion provider or abortion fund in the same manner as the entity provides those services to the general public;

(6) 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; and

(7) any speech or conduct of a pregnancy resource center that does not offer abortions or provide abortion referrals or abortion-doula services, which is made in the context of providing counseling to a pregnant woman who seeks their services.

(d) Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other

law or regulation in the absence of this section.

(e) 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 or civil liability under this section.

(f) This section shall apply extraterritorially to the maximum extent permitted by the Constitution of the United States and the Texas Constitution.

SECTION 3: ABORTIONS PROHIBITED ON PLAINS RESIDENTS

(a) It is the policy of the city of Plains to protect its unborn residents from individuals and organizations that aid or abet the killing of unborn children, and to protect the unborn from those who seek to kill or otherwise harm them, to the maximum extent permissible under state and federal law. The prohibitions in this section and chapter shall apply extraterritorially to the maximum extent permitted by the Constitution of the United States and the Texas Constitution.

(b) Except as provided by subsection (c), it shall be unlawful for any person to knowingly perform an elective abortion or knowingly engage in conduct that aids or abets an elective abortion if the abortion is performed on a resident of Plains, regardless of the location of the abortion, regardless of the law in the jurisdiction where the abortion occurred, and regardless of whether the person knew or should have known that the abortion was performed or induced on a resident of Plains.

(c) Notwithstanding any other law, subsection (b) does not prohibit:

> (1) abortions performed or induced in response to a medical emergency, or any conduct that aids or abets or attempts to aid or abet such abortions;
>
> (2) 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 8 of the Texas Constitution;
>
> (3) conduct that the city of Plains is forbidden to regulate under federal law or the Constitution of the United States;
>
> (4) conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;
>
> (5) The provision of basic public services, including fire and police protection and utilities, by a governmental entity or a common carrier to an abortion provider, an abortion fund, or an affiliate of an abortion provider or abortion fund in the same manner as the entity provides those services to the general public;
>
> (6) 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; and
>
> (7) any speech or conduct of a pregnancy resource center that does not offer abortions or provide abortion referrals or abortion-doula services, which is made in the context of providing counseling to a pregnant woman who seeks their services.

(d) Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer

or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

(e) 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 or civil liability under this section.

SECTION 4: PROHIBITED ABORTION TRAFFICKING

(a) It is the policy of the city of Plains to protect unborn children passing through the city from individuals and organizations that aid or abet the killing of unborn children, and to protect the unborn from those who seek to kill or otherwise harm them, to the maximum extent permissible under state and federal law. The prohibitions in this section and chapter shall apply extraterritorially to the maximum extent permitted by the Constitution of the United States and the Texas Constitution.

(b) Except as provided by subsection (d), it shall be unlawful for any person to knowingly transport any individual for the purpose of providing or obtaining an elective abortion, regardless of where the elective abortion will occur. This section shall apply only if the transportation of such individual begins, ends, or passes through the city of Plains.

(c) It shall be unlawful for any person to knowingly aid or abet the conduct described in subsection (b). The prohibition in this section includes, but is not limited to, the following acts:

> (1) Offering, providing, or lending money, digital currency, or other resources with the knowledge that it will be used to pay for, offset, or reimburse the costs of transportation prohibited by subsection (a); and
>
> (2) Engaging in any conduct that would make one an accomplice to a violation of subsection (a) under the principles of complicity set forth in section 7.02 of the Texas Penal Code.

(d) Notwithstanding any other provision of law, this section shall not apply to:

> (1) 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 8 of the Texas Constitution;
>
> (2) conduct that the City of Plains is forbidden to regulate under federal or state law;
>
> (3) conduct taken by a pregnant woman who aborts or seeks to abort her unborn child, or who travels for the purpose of aborting her unborn child; and
>
> (4) 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.

(e) Notwithstanding any other law, the requirements of this section shall be enforced

exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

(f) 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 or civil liability under this section.

SECTION 5: ABORTION-INDUCING DRUGS PROHIBITED

(a) Except as provided by subsection (b), it shall be unlawful for any person to:

(1) Manufacture, possess, or distribute abortion-inducing drugs in Plains;

(2) Mail, transport, deliver, or provide abortion-inducing drugs in any manner to or from any person or location in Plains;

(3) Engage in any conduct that would make one an accomplice to the conduct described in subsections (a)(1) and (a)(2) under the principles of complicity set forth in section 7.02 of the Texas Penal Code.

(b) Notwithstanding any other law, subsection (a) does not prohibit:

(1) 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 8 of the Texas Constitution;

(2) conduct that the city of Plains is forbidden to regulate under federal or state law;

(3) conduct taken by a pregnant woman who aborts or seeks to abort her unborn child;

(4) the possession, distribution, mailing, transporting, delivery, or provision of abortion-inducing drugs for a purpose that does not include termination of a pregnancy;

(5) the possession of abortion-inducing drugs resulting from an effort to entrap individuals or entities that violate this section;

(6) 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; and

(7) conduct taken by a licensed medical professional that is necessary to perform, induce, or facilitate an abortion in response to a medical emergency, or to ensure that the licensed medical professional is prepared to perform, induce, or facilitate an abortion in response to a medical emergency, so long as that conduct is not in any way intended to facilitate an elective abortion.

(c) Notwithstanding any other law, the requirements of this section shall be enforced

exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

(d) 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 or civil liability under this section.

SECTION 6: PROHIBITED CRIMINAL ORGANIZATIONS

(a) The following entities are declared to be criminal organizations:

(1) Any organization that, with the intent to aid or abet an elective abortion, violates 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

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

(B) 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;

(2) Any organization that, with the intent to aid or abet an elective abortion, violates 18 U.S.C. § 1462 by:

(A) 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;

(B) Knowingly taking or receiving, from an express company or other common carrier or interactive computer service, any drug, medicine, article, or thing designed, adapted, or intended for producing abortion.

(3) Any organization that violates the enacted abortion statutes of any state or local jurisdiction, regardless of whether the statutes or the enforcement of those statutes has been enjoined or declared unconstitutional by a court; and

(4) Any affiliate of an organization described in Subparagraphs (1) or (2).

(b) It shall be unlawful for any criminal organization described in subsection (a) to operate or do business in the city of Plains.

(c) Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other

law or regulation in the absence of this section.

SECTION 7: PROHIBITED TRANSPORTATION AND DISPOSAL OF THE REMAINS OF AN UNBORN CHILD KILLED BY AN ELECTIVE ABORTION

(a) It shall be unlawful for any person to transport the remains of an unborn child who was killed by an elective abortion from any abortion provider into the city of Plains, or to dispose of such remains from any abortion provider within the city of Plains.

(b) Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this section may be taken or threatened by the city of Plains, or by any officer or employee of this city, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

(c) Under no circumstance may the mother of the unborn child that has been aborted, be subject to prosecution or penalty or civil liability under this section.

SECTION 8: PRIVATE RIGHT OF ACTION

(a) Any person, other than the city of Plains, and any officer or employee of the city, has standing to bring and may bring a civil action against any person or entity that:

(1) violates any provision of Sections 2, 3, 4, 5, 6, or 7; or

(2) intends to violate any provision of Sections 2, 3, 4, 5, 6, or 7,

PROVIDED, that no lawsuit may be brought under this section against a provider or user of an interactive computer service if such a lawsuit would be preempted by 47 U.S.C. § 230(c).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating Sections 2, 3, 4, 5, 6, or 7;

(2) nominal and compensatory damages if the plaintiff has suffered injury or harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress;

(3) statutory damages in an amount of not less than $10,000 for each violation of Sections 2, 3, 4, 5, 6, or 7; and

(4) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under Subsection (b)(3) or (b)(4) in response to a violation of Subsection (a)(1) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (b)(3) in another action for that particular violation of Sections 2, 3, 4, 5, 6, or 7.

(d) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements or provisions of this ordinance are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) a defendant's reliance on any federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

(6) non-mutual issue preclusion or non-mutual claim preclusion;

(7) the consent of the plaintiff or the unborn child's mother to the abortion;

(8) contributory or comparative negligence;

(9) assumption of risk; and

(10) any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 9.

(f) It is an affirmative defense if a person sued under this section:

(1) was unaware that it was engaged in conduct described in Sections 2, 3, 4, 5, 6, or 7; and

(2) took every reasonable precaution to ensure that it would not violate Sections 2, 3, 4, 5, 6, or 7.

The defendant has the burden of proving an affirmative defense under this Subsection by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by article 1, section 8 of the Texas Constitution.

(h) Notwithstanding any other law, neither the city of Plains, nor any officer or employee of the city of Plains may:

(1) act in concert or participation with anyone who brings suit under this section;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

(3) make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

(4) intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (h)(1)–(4).

(i) Notwithstanding any other law, a court may not award costs or attorneys' fees to a litigant who is sued under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought:

(1) against the woman upon whom the abortion was performed or induced or attempted to be performed or induced in violation of this ordinance, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this ordinance; (2) against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

(3) against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

(4) by any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

(k) Notwithstanding any other law, a civil action under this section may be brought only in the district courts of the state of Texas and may not be considered by any municipal or county court.

SECTION 9: AFFIRMATIVE DEFENSES

(a) A defendant against whom an action is brought under Section 9 may assert an affirmative defense to liability under this section if:

(1) the imposition of civil liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(2) the defendant

(A) has standing to assert the rights of a third party under the tests for third-party standing established by the Supreme Court of the United States; and

(B) demonstrates that the imposition of civil liability on the defendant will violate constitutional or federally protected rights belonging to that third party.

The defendant shall bear the burden of proving the affirmative defense in Subsection (a) by a preponderance of the evidence.

(b) Nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of this chapter as a defense to liability under, or from asserting any other defense that might be available under any other source of law.

(c) Notwithstanding any other law, no court may apply the law of another state or jurisdiction to any civil action brought under Section 8 unless article VI of the Constitution of the United States or the constitution or laws of the State of Texas compels it to do so.

SECTION 10: 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 city 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 a 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, unconstitutional, because it is the city's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

(c) The city 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 city official from enforcing a statute or ordinance is never rewriting a statute 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 law;
>
> (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 or ordinance in a limited and defined set of

circumstances.

(f) If 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 which can be enforced against a person, group of persons, or circumstances without violating federal or state law, 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 or state law, 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.

D. EFFECTIVE DATE

This ordinance shall go into immediate effect upon a majority vote within the city of Plains city council meeting.

PASSED, ADOPTED, SIGNED and APPROVED,

_____

Mayor of the City of Plains, Texas

_____

City Secretary of the City of Plains, Texas

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS AND WITNESSES TO THIS PROCLAMATION, THIS _____ DAY OF _____, THE YEAR OF OUR LORD _____.

WITNESS: _____

WITNESS: _____