

RESOLUTION AND ORDINANCE PROHIBITING THE LOCATION AND OPERATION OF ABORTION CLINICS WITHIN THE BOUNDARIES OF RUSSELL COUNTY, VIRGINIA

WHEREAS, “[t]he Constitution and laws of the United States and the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth;¹” and

WHEREAS, “the power of the State, under its police power, to provide for the health of its people, has never been questioned, but on the contrary, has been stressed as one of the powers which may be given the broadest application; and it is common knowledge that this power has been increasingly exercised, in keeping with advances made in the sciences of medicine and sanitation, in recent years. In these circumstances, courts are reluctant to place limits on what may be done in the interest of the health of a community, so long as unreasonable methods are not employed, nor the natural and constitutional rights of citizens invaded;²” and

WHEREAS, “[t]he citizen owns his property absolutely, it is true; it cannot be taken from him for any private use whatever without his consent; nor for any public use without compensation. Still he owns it subject to this restriction, namely, that it must be so used as not to injure others, and that the sovereign authority may, by police regulations, so direct the use of it that it shall not prove pernicious to his neighbors, or the citizens generally;³” and

WHEREAS, “[i]t is well settled that the state under its police power has the right to regulate any business, occupation, trade or calling in order to protect the public health, morals, and welfare, subject to the restriction of reasonable classification. This power to regulate includes the power to license; and it is the settled general rule that to protect the health, morals, and welfare of the public a state can license an occupation, trade or calling. Where the business or vocation is one of a nonuseful nature, or one likely to develop into a nuisance, the state may, in the exercise of its

¹ *Va. Code Ann.* § 1-248.

² *Weber City Sanitation Com. v. Craft*, 196 Va. 1140, 1147 (1955).

³ 1 Dillon, *Municipal Corporations*, 3rd Ed., § 141; *Hopkins v. Richmond*, 117 Va. 692, 86 S.E. 139. *Weber City Sanitation Com. v. Craft*, 196 Va. 1140, 1148-49, 87 S.E.2d 153, 158-59 (1955). (quoting) *In* 33 Am. Jur., sec. 17, p. 336.

police authority, license or absolutely prohibit it as regard for the welfare of the community may seem to justify;⁴” and

WHEREAS, the Virginia General Assembly has conferred upon localities the same general police power, more specifically, “[a]ny county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth;⁵” and

WHEREAS, neither the United States Constitution, nor any federal statute or regulation provide a right to abortion services; and

WHEREAS, the Virginia General Assembly has not passed any statute, nor does the Constitution of Virginia provide the Commonwealth of Virginia exclusive authority to regulate abortion services, nor does existing Virginia law occupy the field regarding the regulation of abortion clinics; and

WHEREAS, two former Attorney Generals for the Commonwealth of Virginia issued official opinions stating that localities do possess the power to regulate abortion clinics subject to general statutory law and constitutional jurisprudence⁶; and

WHEREAS, the National Abortion Federation provides statistics regarding the number of criminal acts conducted at abortion clinics from 1977-2009⁷; and

WHEREAS, crimes detailed in the aforementioned statistics include, Murder, Attempted Murder, Bombing, Arson, Attempted Bomb/Arson, Invasion, Vandalism, Trespassing, Butyric Acid Attacks, Anthrax Threats, Assault & Battery, Death Threats, Kidnapping, Burglary, Stalking, etc.;⁸ and

WHEREAS, the numbers included in the statistics only reflect incidents reported to the National Abortion Federation and “actual incidents are likely much higher;⁹” and

WHEREAS, Russell County is a rural county, with a population of 25,550 people as of the 2021 census. Additionally, a significant portion of Russell County is

⁴ *Flax v. Richmond*, 189 Va. 273, 283 (1949).

⁵ *Va. Code Ann.* § 15.2-1200.

⁶ See 2007 Va. AG LEXIS 42 and 2010 Va. AG Lexis 45.

⁷ See NAF Violence and Disruption Statistics.

⁸ *Id.*

⁹ *Id.*

agricultural and thus eligible for the County's land use ordinance thereby reducing the County's overall tax revenue; and

WHEREAS, due to budgetary constraints, the Board of Supervisors of Russell County, Virginia, do not believe that the current funding for the Russell County Sheriff's Office would be sufficient to provide the requisite amount of law enforcement personnel to address the increased crime associated with facilities that provide abortion services; and

WHEREAS, the only way to provide the Russell County Sheriff's Office with additional funding for increased law enforcement personnel would be to raise real estate and personal property taxes upon its citizens; and

WHEREAS, the Board of Supervisors of Russell County, Virginia, finds that it is not in the best interests of the citizens of Russell County to pay additional taxes to allow for facilities that provide abortion services; and

WHEREAS, the Board of Supervisors of Russell County, Virginia properly advertised the proposed adoption the following ordinance in accordance with applicable Virginia law.

NOW THEREFORE BE IT RESOLVED, the Board of Supervisors of Russell County, Virginia, declare that due to the likelihood that any facility that provides abortion services in Russell County would become a nuisance and increase overall crime within Russell County, that under its general police power conferred by *Va. Code Ann.* §15.2-1200 and in the interest of the welfare of its citizens that by duly adopted ordinance shall prohibit facilities that provide abortion services within the boundaries of Russell County, Virginia.

BE IT FURTHER RESLOVED, that the following language is hereby enacted as Ordinance No. 001-2023 and hereby incorporates the language contained in this resolution herein:

ORDINANCE NO. 001-2023

Due to the likelihood that the location of an abortion clinic, defined herein, would create a public nuisance in Russell County and place an undue burden on the taxpayers of Russell County, abortion clinics are prohibited from locating or operating within the boundaries of Russell County.

“Abortion clinic means a facility, other than a hospital, where any person administers to, or causes to be taken by a woman, any drug, medicine, or any other substance, other than contraceptive methods that are approved by the U.S. Food and Drug Administration, or use any instrument, device, or means, with intent to knowingly destroy the life of an embryo or fetus in his or her mother's womb.”

Violations of the this ordinance shall be a Class 1 Misdemeanor and include a fine not to exceed one thousand dollars, \$1,000.00 per violation. Each day of operation in violation of this ordinance shall constitute a separate and distinct violation of this ordinance.

Any and all costs incurred by the county in the enforcement of this ordinance shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied. In addition, an administrative fee of \$150.00 or 25% of the cost, whichever is less; however in no event shall the fee be less than \$25.00.

That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance.

This Ordinance shall be in full force and effect upon adoption.



Lou Ann Wallace, Chairperson
Russell County Board of Supervisors

ATTEST:



Lonzo Lester, Clerk
Russell County Board of Supervisors

AYES: 7

NAYS: 0

ABSTENTIONS: 0