

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**FEMHEALTH USA, Inc., d/b/a
carafem, on behalf of itself,
its physicians, its staff, and
its patients,**

Plaintiff,

v.

**CITY OF MOUNT JULIET,
TENNESSEE; KENNY MARTIN,
City Manager of Mount Juliet,
in his official capacity; JAMES
HAMBRICK, Chief of Police of
Mount Juliet, in his official
capacity; JENNIFER HAMBLLEN,
Zoning Administrator of Mount
Juliet, in her official capacity,**

Defendants.

Case No.: 3:19-CV-01141

**DISTRICT JUDGE RICHARDSON/
MAGISTRATE JUDGE NEWBERN**

AGREED ORDER OF COMPROMISE AND SETTLEMENT

WHEREAS, Plaintiff FemHealth USA, Inc., d/b/a carafem (“carafem”) brought this action, on behalf of itself, its physicians and staff, and its patients, against Defendants City of Mount Juliet; Kenny Martin, City Manager of Mount Juliet, in his official capacity; James Hambrick, Chief of Police of Mount Juliet, in his official capacity; Jennifer Hamblen, Zoning Administrator of Mount Juliet, in her official capacity (each a “Defendant,” and collectively, “Defendants”) (D.I. 1; D.I. 36.);

WHEREAS, carafem alleges that Mount Juliet Ordinance 2019-16 and Ordinance 2020-8 (together, the “Ordinances”) (i) violated the Due Process Clause of the Fourteenth Amendment

to the United States Constitution by having the unconstitutional purpose of imposing an undue burden on women seeking a surgical abortion in Mt. Juliet; (ii) violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution by having the unconstitutional effect of imposing an undue burden on women seeking a surgical abortion in Mt. Juliet; (iii) violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by making an unconstitutional distinction between surgical abortion clinics and other medical facilities; and (iv) constituted arbitrary, unreasonable, capricious, and discriminatory zoning decisions in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Tennessee Constitution;

WHEREAS, carafem sought relief in the form of a declaratory judgment and a permanent injunction, and further sought to enjoin Defendants and their agents from enforcing the Ordinances while this case is pending;

WHEREAS, the District Court entered a preliminary injunction against the enforcement of the Ordinances on May 1, 2020, finding that carafem had shown a strong likelihood of success on its claims that the Ordinances violate the Due Process and Equal Protection clauses of the Fourteenth Amendment (D.I. 54.);

WHEREAS, after the District Court granted a preliminary injunction, the Defendants voluntarily repealed the ordinances in their entirety;

WHEREAS, this Agreed Order of Compromise and Settlement (“Order”) is intended to constitute a complete and final resolution of the claims alleged in this action, including all claims set forth in carafem’s Complaint and Amended Complaint and Defendants’ Counterclaim; and

WHEREAS, the parties agree that the controversy should be resolved without further proceedings or an evidentiary hearing, and agree to the entry of this Order;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. This Court has jurisdiction over the subject matter of this action and over all parties pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3-4), and venue is proper in this District under 28 U.S.C. § 1391(b) and (c). For purposes of this Order, or any action to enforce or interpret this Order, the parties consent to the Court's jurisdiction over the parties, this Order, and any action to enforce or interpret the Order.

2. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, agree that they shall not approve, pass, authorize, implement, or re-enact either of the Ordinances or anything substantially similar to them for a period of one (1) year from the date of this Order.

3. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, agree that carafem's current facilities are permitted and abortions and other health services currently offered or planned to be offered by carafem or its affiliates or successors-in-interest at that location are grandfathered uses, even if there is a decision of a higher court that permits the City to place time, place and manner restrictions on abortion clinics. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, agree that the provision of abortions and other health services currently offered or planned to be offered by carafem is and shall be classified within the activity type "Professional services,

medical” and within the use listing “Physicians’ offices and clinics (outpatient services)” as those terms are currently used in the Zoning Regulations of the Land Use Code of the City.¹

4. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, agree that carafem (which for purposes of this paragraph shall include its affiliates or successors-in-interest) shall be permitted to relocate its operations to other districts and locations in the City where “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” are permitted by the City’s zoning maps and zoning regulations at the time carafem seeks to relocate its operations. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, further agree that the City shall not take action to prevent carafem from relocating its operations to other locations or districts in the City where “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” are permitted by the City’s zoning maps and zoning regulations after carafem has identified a location in such district to relocate its operations (the “Target Location”) by (a) rezoning the Target Location to a district classification in which “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” are not permitted in that classification, (b) removing “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” from the list of permitted uses in the zoning classification or district in which the Target Location is situated, (c) a combination of (a) or (b), or (d) any other action which has the purpose of preventing carafem from relocating its operations to the Target Location where

¹ For purposes of this Order, “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” include these activity types and any future activity types which encompass substantially the same uses.

“Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” was a permitted use at the time carafem identified the Target Location as a potential location to which it desires to move its operations. The foregoing provisions of this paragraph 3 shall not prevent the City from rezoning any property in the City to a district that does not permit the provision of “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” if the City makes the zoning change for bona fide reasons unrelated to carafem’s proposed provision of abortions and other health services and makes the zoning change before carafem identifies a location in the district as a Target Location.

5. Defendants, collectively and individually, including their officers, directors, agents, employees, contractors, attorneys, and successors in office, and all persons acting in concert with them, further agree that if there is any change to the zoning maps or Zoning Regulations applicable to the location where carafem, its affiliates or successors-in-interest currently or then leases space in the City such that “Professional services, medical” or “Physicians’ offices and clinics (outpatient services)” is no longer a permitted use at such location, carafem’s use of its location for abortions and other health services currently or then being provided by carafem shall be permitted to continue as a nonconforming use under Section 13-102.5 of the City Zoning Regulations and shall be permitted to expand where permitted under Section 13-102.7 of the City Zoning Regulations. The provision of abortions and other health services allowed by this Order shall not be considered a violation of any law, order, rule, regulation or ordinance of the City.

6. The terms of this Order shall be binding upon Defendants, collectively and individually, including their officials, officers, agents, employees, contractors, attorneys, and successors in office, and all persons acting on their behalf or in concert with them. Each City

Commissioner, the City Administrator, the City Chief of Police, the City Zoning Administrator, the head of the Building & Codes Department, and their successors in office, shall be provided with a copy of this Order and notified that they shall not treat carafem differently than any other medical services provider in terms of City services, permitting, and citations. This Paragraph shall not be deemed to limit any remedies available in the event of any finding by the Court regarding a violation of this Order.

7. The Parties agree that as a result of entry of this Agreed Order of Compromise and Settlement, carafem is the “prevailing party” as that term is used in 42 U.S.C. § 1988. The parties agree that such reasonable fees and expenses shall be in the amount of \$225,000. Defendants shall cause this amount to be paid to Willkie Farr & Gallagher LLP on or before September 30, 2020.

8. This Court shall have all available powers to enforce compliance with the provisions of this Order, including but not limited to monetary sanctions and injunctive relief, to resolve all disputes arising hereunder, and to grant any such additional relief as may be necessary or appropriate.

This Order constitutes the final judgment in this case and the parties agree to waive their rights to appeal this Order.

IT IS SO ORDERED

Entered this 10th day of September, 2020.


District Judge Eli Richardson

Approved for Entry By:

/s/ Mark E. McGrady

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