



CITY OF BLOOMFIELD, NEW MEXICO

Ordinance 493

AN ORDINANCE AMENDING ORDINANCE NO. 252, RELATING TO TOBACCO SALES TO MINORS

WHEREAS, Chapter Eleven (11) of the Bloomfield Municipal Code governs Tobacco Sales to Minors

WHEREAS, the City of Bloomfield desires to revise and update the following provisions within Chapter Eleven (11)

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BLOOMFIELD THAT THE FOLLOWING REVISIONS AND ADDITIONS TO CHAPTER ELEVEN (11) OF THE BLOOMFIELD MUNICIPAL CODE BE IN FULL FORCE AND EFFECT UPON ADOPTION OF THIS ORDINANCE:

Sec. 11-138. - Tobacco sales to minors.

(a) Definitions.

- (1) "Distribute" shall mean to give, deliver, sell, offer to give, deliver, sell or barter.
- (2) "Establishment not generally accessible to or frequented by minors" includes those establishments from which unaccompanied minors are generally excluded by custom or law, including, but not limited to, bars, cocktail lounges and private clubhouses for members of fraternal or civil organizations.
- (3) "Photographic identification" shall mean any officially issued card which includes a photograph of the person seeking to purchase tobacco products and is accepted as proof of age for the sale of alcoholic beverages under state law.

(4) "Public place" shall mean any area to which the general public is invited or permitted, including but [not] limited to all buildings and property owned by the State of New Mexico and/or the City of Bloomfield.

(5) "Tobacco product" shall mean any substance that contains tobacco, including but not limited to cigarettes, cigars, pipes, smoking tobacco, but excluding all forms of smokeless tobacco.

(6) "Vending machine" shall mean any mechanical, electronic or other similar device which automatically dispenses tobacco products usually upon the insertion of a coin, token or slug.

(b) *Distribution to minors.*

(1) It shall be unlawful for any person to distribute tobacco products to any individual under twenty-one (21) years of age or sell tobacco products to any individual who is under twenty-one (21) years of age. This section does not apply to the parent or guardian or adult spouse of any minor, or adult person into whose custody any court has committed the minor for the time.

(2) It shall be an affirmative defense that the seller of a tobacco product to an individual under twenty-one (21) years of age has requested and examined photographic identification from such person establishing their age as over twenty-one (21) years of age prior to the selling of such person a tobacco product. The failure of a seller to request and examine photographic identification from a person under twenty-one (21) years old before the sale of a tobacco product to such person shall be a rebuttable presumption of the seller's guilt under this section.

(c) *Distribution through vending machines.* No person shall distribute the operation of a vending machine in a public place except at an establishment not generally accessible to or frequented by minors.

(d) *Distribution in sealed packages only.* No person shall distribute tobacco products for commercial purposes other than in the sealed package provided by the manufacturer with the required health warning and state tax stamp.

(e) *Penalty for violation.* Violation of any of these sections is a misdemeanor and punishable pursuant to [section 1-13](#) et seq. of the Bloomfield Municipal Code.

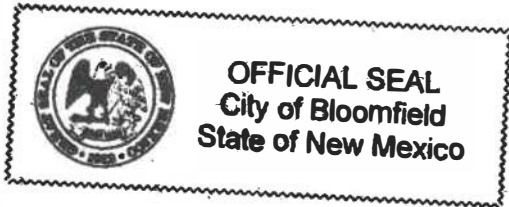
(f) *Severability clause.* It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses, and phrases of this section are severable, and if any phrase, clause, sentence, paragraph or section of this section shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such phrases, clauses, sentences, paragraphs, and sections of this section shall not affect the validity of the remaining portions of this section, since the same would have been enacted by the city council without such unconstitutional phrase, clause, sentence, paragraph or section, and said valid remainder of this section shall be construed and entered as if such illegal or invalid provision had not been contained herein.

(g) Reference federal law change: December 16th, 2020 Senate Amendment to H.R. 1865 Section 906(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d))

(Ord. No. 252, § 1, 10-26-92)

Except for the changes set forth above, the provisions of Chapter Eleven (11) of the Bloomfield Municipal Code are hereby ratified and confirmed.

Passed, Approved, Signed and Adopted this 23 day of November 2020.



Cynthia Atencio
Cynthia Atencio, MAYOR

ATTEST:

Crystal L. Martinez Hornberger
Crystal L Martinez Hornberger, CITY CLERK