



CITY OF BLOOMFIELD, NEW MEXICO

Ordinance 491

AN ORDINANCE AMENDING ORDINANCE NO. 39, 149, 160, 163, 172, 266, 311, 341, 355, 468, RELATING TO TAXATION

WHEREAS, Chapter Sixteen (16) of the Bloomfield Municipal Code governs Offenses.

WHEREAS, the City of Bloomfield desires to revise and update the following provisions within Chapter Sixteen (16)

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BLOOMFIELD THAT THE FOLLOWING REVISIONS AND ADDITIONS TO CHAPTER SIXTEEN (16) OF THE BLOOMFIELD MUNICIPAL CODE BE IN FULL FORCE AND EFFECT UPON ADOPTION OF THIS ORDINANCE:

Sec. 16-52. - License required; fees.

The following fees apply to all persons engaged in the pursuits, businesses or occupations, and shall before commencing business, obtain a license from the city.

- (1) General\$35.00
- (2) Canvassers, solicitors, peddlers, per day\$5.00 (minimum 30 consecutive days)
- (3) Food vending vehicle (per vehicle)\$35.00
- (4) Home occupations/business\$35.00
- (5) Growers Market.....no charge
- (6) Outdoor Sales, per day.....\$5.00 (minimum 30 consecutive days)
- (7) Flea Market.....\$200.00
- (8) Adult oriented business....\$200.00
- (9) Garage sales....no charge

Sec. 16-53. - Requirements for outdoor sales, canvassers, solicitors, peddlers.

Outdoor sales, canvassers, solicitors or peddlers shall be subject to the following requirements:

- (1) Shall be limited to thirty (30) consecutive days not to exceed ninety (90) days of a calendar year.
- (2) Merchandise shall not be displayed within any public right-of-way, or impede vehicular or pedestrian traffic or obstruct any clear sight triangle.
- (3) The display area shall not reduce the parking on the premises below the required minimum allowed by the city zoning regulations (Appendix C, [section 6](#), article 12)
- (4) Written permission from the property owner shall be obtained prior to issuance of a city license and/or conducting business. A copy of the written permission and license shall be on file with the city clerk.
- (5) Outdoor sales shall only be allowed in the following zoning districts: Neighborhood Commercial, Community Commercial, Limited Industrial or Industrial Districts. No outdoor sales, displaying goods shall be allowed in any residential districts.
- (6) Each canvasser, solicitor, or peddler must obtain their own license and have it displayed on their person at all times while conducting sales.
- (7) All other applicable city zoning regulations and/or ordinances shall be adhered to.

Sec. 16-54- Growers' Markets.

"Growers' market" shall mean any sales arena, whether open-air or enclosed, whereby persons engage in the sale of food and food related items by renting, leasing or buying slots or stalls in said arena.

- (1) Any person conducting or operating a growers' market shall first be required to obtain a license to do so from the city clerk. Applications for such license shall be made to the city clerk in such form as may be required by the city clerk and shall be free of charge. This license covers any person selling within the growers' market with the organizer's approval according to their regulations. Additional business licenses for each vendor are not required.
- (2) An operator shall not knowingly allow the sale of goods subject to the New Mexico gross receipts tax without the proper reporting of said tax to the State of New Mexico as required by law.
- (3) An operator shall not knowingly allow the sale of goods which he believes or has reason to believe have been stolen.
- (4) The growers' market operator shall at all times keep the premises in a sanitary condition and shall properly provide for the gathering and disposal of refuse.

Sec. 16-55. - Exemptions for garage sales and canvassers.

- (a) Garage sales refer to sections [14-45](#) through [section 14-49](#).
- (b) Persons or organization representing canvassers must register with the city clerk prior to beginning.
- (c) Those persons representing charitable associations, organizations existing under the provisions of NMSA 1978 Section 53-8-1 or NMSA 1978 Section 53-10-1 pertaining to nonprofit organization or which are exempt from taxation under 26 USC 501 [are exempt under the provisions or this section].

Sec. 16-56 - Adult oriented business; license requirements and regulations.

- (a) *Generally; definitions.*

(1) No adult oriented business shall be established within the city limits, from and after the effective date of this section unless approval by the city council has been obtained first as described in [section 16-57](#) of this Code.

(2) Wherever used in this section, the following words or phrases shall have the meanings ascribed to them as follows:

a. *Adult oriented business*: An adult oriented business shall include adult bookstore, adult motion picture theater, adult motel, adult entertainment center, nude model studio, or sexual encounter center, or adult arcade.

b. *Adult book store*: An establishment having a substantial or significant portion of its stock in trade, books, magazines, films or videos for sale, rental, or viewing on the premises by means of motion picture devices or other coin operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing, or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse, as defined below, or an establishment with a segment or section devoted to the sale, rental or display of such materials to patrons therein.

c. *Adult only motion picture theater*: An enclosed building used routinely for presenting programs, materials distinguished or characterized by emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement, or sadomasochistic abuse for observation by patrons therein. As used herein, an adult only motion picture theater shall provide seating for five (5) or more persons.

d. *Adult entertainment center*: An enclosed building or part of an enclosed building, no portion of which enclosed business is licensed to sell liquor which contains one (1) or more coin operated mechanisms which when activated, permit a customer to view a live person unclothed or in such attire, costume or clothing as to expose any portion of the female breast below the top of the areola, or any portion of the pubic area, anus, cleft of the buttocks, vulva, or genitals, or penis or the charging of any admission or fee for the viewing of any such person or activity.

e. *Adult arcade*: Any place to which the public is permitted or invited wherein coin operated, or slug operated, or electronically operated, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual conduct defined in this section.

f. *Nudity*: The showing of the human male or female genitals, pubic region or pubic hair, or buttocks with less than a fully opaque covering or the showing of a female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of the covered male genitals in a discernibly turgid state.

g. *Adult motel*: A hotel or motel or similar establishment which offers accommodations to the public for any form of consideration and which provides patrons with closed circuit television, transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities and which offers a sleeping room for rent for a period of time that is less than eight (8) hours, or which provides for rental rates in increments of eight (8) hour or less.

h. *Sexual encounter center*: A business or commercial enterprise that, as one (1) of its primary business purposes, offers for consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. Activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in the state of nudity or semi-nudity, whether or not there is physical contact between the participants. This definition shall not apply to any state licensed practitioner of healing arts.

i. *Sexual activity*: Means and includes any of the following:

1. The fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breasts.
2. The sex acts, normal or abnormal, actual or simulated including intercourse, or copulation, or sodomy;
3. Masturbation, actual or simulated, or excretory function as a part of or in connection with any of the activities set forth in the paragraphs above.

j. *Anatomical area*: Any part of the human genitalia in the state of sexual arousal.

k. *Sexual conduct*: Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic region, buttocks, or female breast.

l. *Sadomasochistic abuses*: Flagellation or torture by or upon a person clad in undergarments, or mask, or bazaar costume or the condition of being bound or otherwise physically restrained.

m. *Residential zone district*: Any district where a house, apartment, duplex, manufactured home, or dwelling may be located.

(b) *Regulations.*

(1) No adult-oriented business shall be located in any zoning district except within the Community Commercial District (CCD) or Limited Industrial District (L-1), or Industrial District (I-1).

(2) Distances: No adult oriented business shall be located, operated or maintained within one thousand (1,000) feet of a residential district (whether or not a dwelling exists) church, state licensed day care facility, public library, public educational facility, private school, day care facility, kindergarten facility, public park, public swimming pool, or public athletic fields (baseball, softball, football, soccer, outdoor basketball or tennis courts).

Measurements: The distances outlined above shall be measured in a straight line from property line to property line.

(3) Exterior display, signage: No adult business shall be conducted as to permit observation of any material depicting, describing or relating to specified activities or anatomical areas from any public right-of-way. This provision shall apply to any display, decoration, sign, show window or other opening.

(4) Responsible parties: The owners, operators and manager(s) of the premises which constitutes an adult business under this ordinance are responsible for compliance with these regulations.

(c) *Licenses requirements.*

(1) No person, partnership, corporation or other organization shall operate an adult oriented business within the city limits without having first obtained a license from the city.

(2) Business license fee: Two hundred dollars (\$200.00) plus a twenty-five dollar (\$25.00) investigative fee as per [section 16-36](#).

(3) A business license application registration is required as per [section 16-32](#).

(d) *Denial of business license.* Denial of a business license [shall be] in accordance with [section 16-57](#).

(e) *Issuance of license.* In the event that the application is completed, the background check of the applicant indicates that no owner, shareholder, partner, officer, director or managing agent has been

convicted of any offenses as described in [section 16-57](#) paragraph (f), which would disqualify the applicant, and the application has been approved by the city council, the city clerk shall issue a business license to the applicant.

(f) *Renewal of license.*

(1) The applicant shall annually submit a new application and shall submit to the background check set forth. In the event the application is filed prior to the expiration of the existing license, the applicant shall be entitled to continue business until such time as notified the any disqualifying factor has been determined by the city clerk.

(2) Any adult oriented business transacting business as of the effective date of this section, shall apply for a new license, pursuant to [section 16-57](#).

(g) *Revocation of license.* Any business license issued pursuant of this article, may be revoked upon any of the following conditions:

(1) As described in [section 16-57](#) paragraph (f); or

(2) The subsequent conviction of any owner, officer, director or managing agent of the business of any crimes which would have disqualified the licensee from obtaining a license; or

(3) Any subsequent change in those portions of the city codes governing adult oriented businesses resulting in a change in state or federal laws.

(h) *Appeal of denial or revocation.* In the event that, in the opinion of the applicant, the denial and/or revocation of the license to operate an adult oriented business was contrary to law, the applicant may appeal the same within ten (10) days from receipt of such notice to the city council for a hearing on the appeal of the decision. If no appeal is taken within the time set forth herein, the denial and/or revocation decision stands and shall become final. If an appeal to the city council is chosen, the applicant and/or licensee shall have further rights of appeal as provided by law.

(i) *Severability.* Should any provision of this section be declared contrary to the constitution of the United States or the State of New Mexico by a final decision of any appellate court of the State of New Mexico, the remaining portions of this section shall remain in full force and effect.

Sec. 16-58. - Definition.

"Flea market" shall mean any sales arena, whether open-air or enclosed, whereby persons engage in the sale or resale of goods or services by renting, leasing or buying slots or stalls in said arena. This does not apply to "Growers Markets" where the sale of goods is limited to food and food related items.

Sec. 16-59. - License required; fee assessed.

Any person conducting or operating a flea market shall first be required to obtain a license to do so from the city clerk. Applications for such license shall be made to the city clerk in such form as may be required by the city clerk and shall be accompanied by a fee of two hundred dollars (\$200.00). This license covers any person selling within a flea market with the organizer's approval according to their regulations. Additional licenses for each vendor are not required.

Sec. 16-60. - Regulation of sale.

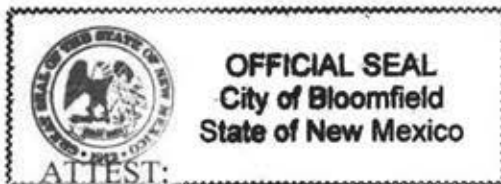
Any person operating a flea market as the organizer shall be subject to the following rules and regulations:

(1) Obtain a Flea Market license from the city clerk with an approved site plan and location.


- (1) Provide a list of names and contact information of all vendors who will be participating in the flea market to the city clerk.
- (2) An operator shall not knowingly allow the selling of goods or services within the flea market by persons who have not obtained a state gross receipts tax number, other than persons engaged in the occasional or isolated sale of their own previously owned items where such sale is not conducted as a business, trade or profession.
- (3) An operator shall not knowingly allow the sale of goods subject to the New Mexico gross receipts tax without the proper reporting of said tax to the State of New Mexico as required by law.
- (4) An operator shall not knowingly allow the sale of goods which he believes or has reason to believe have been stolen.
- (5) The flea market operator shall at all times keep the premises in a sanitary condition and shall properly provide for the gathering and disposal of refuse.
- (6) No operator shall allow sales to take place other than between the period beginning at 6:00 a.m. and ending at 8:00 p.m.

Except for the changes set forth above, the provisions of 16-52, 16-53, 16-54, 16-55, 16-56, and 16-57 of the Bloomfield Municipal Code are hereby ratified and confirmed.

Passed, Approved, Signed and Adopted this 26 day of October 2020.




Cynthia Atencio, MAYOR


Crystal L Martinez Hornberger, CITY CLERK