

ORDINANCE NO 2184-2022

**AN ORDINANCE REQUIRING ABORTION PROVIDERS IN THE
CITY OF CLOVIS TO COMPLY WITH FEDERAL LAW**

BE IT ORDAINED by the governing body, that is, the City Commission of the City of Clovis, New Mexico:

SECTION ONE. FINDINGS AND DECLARATIONS:

The City Commission finds that:

(1) 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 (RICO) Act, *see* 18 U.S.C. § 1961.

(2) The state constitution of New Mexico does not and cannot secure a right, privilege, or immunity to act in violation of federal statutes such as 18 U.S.C. §§ 1461–62, or to engage in criminal and racketeering conduct as defined by federal law.

(3) The members of the City Commission are bound by oath to support and defend the Constitution of the United States, and the statutory provisions codified in 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 Clovis and by every judge in the state of New Mexico. 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.”).

SECTION TWO. AMENDMENTS TO CITY CODE:

Title 9 of the Clovis City Code is amended by adding Chapter 9.90 to read as follows:

IX. - ABORTION

Chapter 9.90 - ABORTION

9.90.010 - Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- A. "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 an individual, 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:
1. In vitro fertilization or fertility treatments of any type;
 2. 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
 3. An act performed with the purpose to:
 - a. Save the life or preserve the health of the unborn child;
 - b. Remove a dead unborn child caused by spontaneous abortion; or
 - c. Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.
 - d. Save the life or preserve the health of the mother in response to a medical emergency.

B. “Abortion clinic” means any building or facility, other than a hospital, where an abortion of any type is performed, or where abortion-inducing drugs are dispensed, distributed, or ingested.

C. “Hospital” means an institution that is:

1. Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services; and
2. Duly licensed for this purpose under the laws of New Mexico.

D. “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.

E. “Medical emergency” means a life threatening physical condition aggravated by, caused by, or arising from 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.

9.90.020 - Abortion License – Required.

It is unlawful for any person or business entity to open or operate an abortion clinic within the municipal boundaries of the City without first obtaining a license pursuant to this chapter.

9.90.030 - Abortion License – Application.

Any person or business entity wishing to apply for a license to open or operate an abortion clinic within the municipal boundaries of the City shall file an application with the City Clerk containing the following:

- A. Name. The name of the person or business entity requesting the license.

- B. Address and Phone Number. The mailing address and phone number of the person or business entity requesting the license.
- C. Location. A street address and legal description for the property for which the license is requested.
- D. Map. Attached to the application must be a map showing the location, proposed and existing improvements (such as buildings, fences, etc.), and the relationship of the location to nearby streets, residential housing, public buildings (such as churches, schools, etc.), public utilities, and the like.
- E. Proposed Activity. A brief narrative describing the activities planned at the location, including the types of abortions to be performed.
- F. Compliance Statement. A statement to the effect that the applicant, or its representative if a business entity, is aware of the regulations contained in this chapter that require compliance with federal abortion laws, and that it will comply with those requirements of federal law as set forth in section 9.90.060.

9.90.040 - License— Issuance or Refusal.

The City Commission shall issue a license to the applicant within thirty (30) days of receiving the application unless:

- A. The applicant fails to provide the information and material required by section 9.90.030; or
- B. The City Commission finds that the proposed activity cannot be accomplished as described without violating the requirements of federal law as set forth in section 9.90.060.

9.90.050 - License— Period of validity— Revocation— Appeal.

- A. Once issued, a license shall be valid until revoked as provided herein.
The City Commission shall revoke a license if it finds that:

1. The applicant or licensee, or any of their employees or agents, have violated the requirements of federal law as set forth in section 9.90.060; or
2. The applicant or licensee, or any of their employees or agents, have deviated from the activities and plans presented in the application or are no longer actively pursuing such activities.

9.90.060 - Compliance with Federal Abortion Laws Required

A. It shall be unlawful for any person or licensed abortion clinic within the municipal boundaries of the City, or any employee or agent of an abortion clinic licensed by the City, to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

1. Any article or thing designed, adapted, or intended for producing abortion; or
2. 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;

B. It shall be unlawful for any person or licensed abortion clinic within the municipal boundaries of the City, or any employee or agent of an abortion clinic licensed by the City, to violate 18 U.S.C. § 1462 by:

1. 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; or
2. Knowingly taking or receiving from such express company or other common carrier or interactive computer service any matter or thing described in subsection (B)(1).

C. It shall be unlawful for any person or licensed abortion clinic within the municipal boundaries of the City, or any employee or agent of an abortion

clinic licensed by the City, to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in Subsections (A) and (B).

9.90.070 - 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 Commission 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 any 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, or unconstitutional, because it is the City Commission's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.
- C. The City Commission 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 local official from enforcing a statute or ordinance is never rewriting the underlying law 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 requirements of the New Mexico Constitution or United States Constitution;
 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 in a limited and defined set of circumstances.
- F. If any court, including 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 can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, 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 or the federal or state constitutions, 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.

SECTION THREE. EFFECTIVE DATE:

This ordinance shall go into immediate effect upon majority vote by the City Commission.

Adopted by the governing body of the City of Clovis this ____ day of _____, 2022.

(S E A L) ATTEST:

CITY OF CLOVIS, NEW MEXICO

By: _____
Michael Morris, Mayor

City Clerk