

**ORDINANCE NO. 2016-04**

**AN ORDINANCE REPEALING SECTION 22-131 THROUGH SECTION 22-153 OF ARTICLE V, ITINERANT VENDORS AND SUBSTITUTING THEREFORE THE FOLLOWING NEW SECTION 22-153 THROUGH SECTION 22-163; AND DECLARING AN EMERGENCY**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF SALLISAW, OKLAHOMA.**

**SECTION 1.**

Section 22-131 through Section 22-153 of Article V, Transient Merchants and Vendors, of the Sallisaw City Code is hereby repealed and new Section 22-153 through Section 22-163 of Article V, Transient Merchants and Vendors, of the Sallisaw Code of Ordinances is hereby established by enacting the following sections, to-wit:

**ARTICLE V. - TRANSIENT MERCHANTS AND VENDORS.**

Section 22-131. Definitions:

(a) For the purpose of this article, a "transient merchant," "itinerant merchant" or "itinerant vendor" is defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the city, except those engaging in garage sale, sales of non-profit entities and/or organizations, special event vendors at special events, and those selling handcrafted furniture, artworks and/or crafts, fruits, vegetables and food products at the Farmer's Market.

Section 22-132. License required:

It is unlawful for any itinerant vendor to sell, offer for sale, exhibit for sale, or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the city without first obtaining a license as provided for in this division. The city clerk shall issue to any itinerant vendor a license authorizing such itinerant vendor to sell, exhibit for sale, offer for sale, or exhibit for the purpose of taking orders for the sale thereof in the city his goods or merchandise only after such itinerant vendor shall have fully

complied with all provisions of this article and shall have paid the license fees provided for in this article, which sum shall be compensation to the city for the services required of it pursuant to this article and to enable the city to partially defray the expenses of enforcing the provisions of this article.

State Law reference— Authority to levy license tax on hawkers and peddlers, 11 O.S. § 22-106.

Section 22-133. Separate licenses required; fee for more than one business.

(a) Every person who engages in, exercises, or pursues a business, profession, trade, occupation, or privilege for which a license is required, at or from more than one place in the city, or who engages in, exercises, or pursues more than one such business, profession, trade, occupation, or privilege, shall pay the fee, and secure a separate license, for each such place or for each such business, profession, trade, occupation, or privilege, except not for profit entities and/or organizations.

(b) Businesses housed or located on separate premises shall be considered as separate businesses for the purpose of levying this tax.

Section 22-134. Going upon private residences.

(a) The practice of going to, in or upon the premises of any private residence in the city by door-to-door salespersons, solicitors, peddlers and order takers, without the express consent, request or invitation of the owner or the occupant of such private residence, for the purpose of soliciting orders for the purchase or for the sale of goods, wares, or publications or merchandise of any description, or the purpose of peddling, or hawking the goods, wares, publications or merchandise, or for the purpose of soliciting subscriptions thereto, is hereby prohibited.

(b) This section shall not apply to sales persons, solicitors, peddlers or order takers representing sales of local nonprofit or charitable organizations.

(c) Any violation of the provisions of this section shall be punishable as misdemeanor against the city. Any person convicted of violating any provisions of this section shall be fined as provided in section 1-8, Chapter

1, Code of Ordinances and as set out in the Master Fee Schedule.

Sections 22-135 - 22-150. Reserved.

Section 22-151. Application.

Applicants for license under this article, whether a person, firm or corporation, shall file a written sworn application signed by the applicant, if an individual, by all partners if a partnership, by the president if a corporation, and by the manager if limited liability company, with the city clerk, showing:

- (1) The name of the person having the management or supervision of the applicant's business during the time that is proposed that it will be carried on in the city;
- (2) The local address of such person while engaged in such business;
- (3) The permanent address of such person;
- (4) The capacity in which such person will act (that is, whether as proprietor, agent or otherwise);
- (5) The name and address of the person for whose account the business will be carried on, if any;
- (6) If a corporation, under the laws of which state the same is incorporated;
- (7) The fingerprints of the persons conducting the applicant's business, or in lieu thereof, at least three letters of recommendation from reliable persons in this county certifying as to the applicant's good character and business responsibility or other evidence which establishes to the satisfaction of the mayor the good character and business responsibility of such person or persons;
- (8) The places in the city where it is proposed to carry on the applicant's business, and the length of time during which it is proposed that the business shall be conducted;
- (9) The places, other than the permanent place of business of the applicant, where the applicant within the six months next preceding the date of the application conducted a transient business, stating the nature thereof and giving the post office and street address of any building or office in which such business was conducted;
- (10) A statement of the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale by applicant in the city, the invoice value and quality of such goods, wares and merchandise, whether the same are proposed to be sold from stock in possession and by sample; at auction, by direct sale and by taking orders for

future delivery; where the goods or property proposed to be sold are manufactured or produced; and where such goods or products are located at the time the application is filed;

- (11) A brief statement of the nature and character of the advertising done or proposed to be done in order to attract customers, and, if required by the city clerk, copies of all the advertising whether by handbills, circular, newspaper advertising, or otherwise, shall be attached to the application as exhibits thereto;
- (12) Whether or not the person conducting the applicant's business has been convicted of a felony, the nature of such offense and the punishment assessed therefor;
- (13) Credentials from the person for which the applicant proposes to do business, authorizing the applicant to act as such representative;
- (14) A copy of the current and valid state sales tax permit in the name of the applicant; and
- (15) Such other reasonable information as to the identity or character of the person having the management or supervision of the applicant's business or the method or plan of doing such business as the city clerk may deem proper to fulfill the purpose of this article in the protection of the public good.

Section 22-152. Investigation and issuance.

- (a) Upon receipt of such application, the city clerk or designee shall cause such investigation of such person's business responsibility or moral character to be made as deemed necessary to the protection of the public good.
- (b) If, as a result of such investigation, the applicant's character and business responsibility are found to be unsatisfactory, the application shall be denied. If, as a result of the investigation, the character and business reputation appear to be satisfactory, the city clerk shall so certify in writing, and a license shall be issued by the city clerk.
- (c) The city clerk shall keep a full record in his office of all licenses issued. Such record shall contain the number of the license, the date the same is issued, the nature of the business authorized to be carried on, the amount of the license fee paid, the expiration date of the license, the place where the business may be carried on under the license, the place where the business may be carried on under the license, and the name of the person authorized to carry on the same.

Section 22-153. Bond.

- (a) Before any license, as provided by this article, shall be issued for engaging in a transient or itinerant business in the city, a bond running to the city in the sum of \$1,000.00 shall be executed by the applicant, as principal, and two sureties, upon which service of process may be made in the state.
- (b) The bond shall be conditioned that the applicant shall comply fully with all of the provisions of the ordinances of the city and the statutes of the state regulating and concerning the sale of goods, wares and merchandise, and will pay all judgments rendered against the applicant for any violation of the ordinances or statutes, or any of them, together with all judgments and costs that may be recovered against him by any person for damage growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether the misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever printed or circulated with reference to the goods, wares and merchandise sold or any part thereof.
- (c) Such bond must be approved by the city attorney, both as to form and as to the responsibility of the sureties thereon.
- (d) Action on the bond may be brought in the name of the city to the use of the aggrieved person.

Section 22-154. Service of process.

- (a) Before any license as herein provided shall be issued for engaging in business as an itinerant merchant in the city, such applicant shall file with the city clerk an instrument nominating and appointing the city clerk, or the person performing the duties of such position, his true and lawful agent with full power and authority to acknowledge service of notice or process for and on behalf of the applicant in respect to any matters connected with or arising out of the business transacted under the license and the bond given as by this article or for the performance of the conditions of the bond or for any breach thereof.
- (b) The instrument shall also contain recitals to the effect that the applicant for the license consents and agrees that service of any

notice or process may be made upon the agent, and when so made shall be taken and held to be as valid as if personally served upon the person applying for the license under this article, according to the law of this or any other state, and waiving all claim or right error by reason of such acknowledgment of service or manner of service. Immediately upon service of process upon the city clerk, as herein provided, the city clerk shall send to the licensee at his last known address, by registered mail, a copy of the process.

Section 22-155. Exhibition of license.

The license issued under this article shall be posted conspicuously in the place of business named therein. In the event that such person applying for the license shall desire to do business in more than one place within the city, separate licenses may be issued for each place of business, and shall be posted conspicuously in each place of business.

Section 22-156. Fees; report of sales.

- (a) Licenses under this article shall pay a license fee as provided in the city fee schedule.
- (b) Every person conducting a business licensed under this article shall, on the first business day of each week and upon discontinuance of business in the city, present to the clerk of the city, at his office, a verified statement showing the total sales made during the preceding week.
- (c) The clerk and any other officer designated by city manager or clerk shall have power and authority to enter any store, building, or any other place in which such temporary business may be conducted at any time during business hours for ascertaining the amount of sales made and shall at all times have access to the books of such business.

Section 22-157. Transfer.

The license permit provided for in this division shall not be transferable nor give authority to more than one person to conduct a business as an itinerant merchant/vendor, but any persons having obtained such license may have the assistance of one or more persons in conducting the business.

Section 22-158. Records.

The city clerk shall deposit the record of fingerprints of the licensee, together with a license number, with the chief of police; the chief of police shall report to the city clerk any complaints against any person licensed under the provisions of this article and any conviction for violation of this article; the city clerk shall keep a record of all such licenses and of such complaints and violations.

Section 22-159. Revocation of license; notice of hearing to license holder.

- (a) The licenses issued pursuant to this article may be revoked by the mayor of the city after notice and hearing for any of the following causes:
- (1) Any fraud, misrepresentation or false statement contained in the application for license;
  - (2) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;
  - (3) Any violation of this article;
  - (4) Conviction of the licensee of any felony or of a misdemeanor involving moral turpitude; or
  - (5) Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (b) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee, at his last known address, at least five days prior to the date set for the hearing.

Section 22-160. Appeal.

- (a) Any person aggrieved by the decision of the city clerk in regard to the denial of application for license or license renewal or in connection

with the revocation of a license shall have the right to appeal to the board of commissioners of the city.

- (b) Such appeal shall be taken by filing with the board of commissioners, within 10 days after notice of the decision by the city clerk has been mailed to such person's last known address, a written statement setting forth the grounds for the appeal. The board of commissioners shall set the time and place for a hearing on such appeal, and notice of such hearing shall be given to such person in the same manner as notice of hearing on revocation.
- (c) The order of this board of commissioners on such appeal shall be final.

Section 22-161. Expiration of license.

All licenses issued under the provisions of this article shall expire one (1) year after the date of issuance thereof.

Section 22-162. Loud noises and speaking devices.

No licensee under this article, nor anyone in his behalf, shall shout, make any outcry, blow a horn, ring a bell or buzzer any other sound device, including any loud-speaking radio or amplifying system, upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom capable of being plainly heard upon the streets, avenues, alleys or parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such license proposes to sell.

Section 22-163. Duty of Code Enforcement and police to enforce.

It is the duty of the code enforcement and police officers of the city to examine all places of business and persons in their respective territories subject to the provisions of this article, to determine if this article has been complied with and to enforce the provisions of this article against any person found to be violating the same.

Sections 22-164 - 22-180. Reserved.



**SECTION 2.**

**WHEREAS**, an emergency and immediate necessity exists by reason of the health, safety and protection of the citizens of Sallisaw; therefore, an emergency is hereby declared to exist by reason whereof this Ordinance shall be in full force and effect from and after its passage and approval.

**PASSED AND APPROVED** this 10th day of October, 2016.

**CITY OF SALLISAW, OKLAHOMA**

By: *Julia Ferguson*  
**JULIA FERGUSON, Mayor**

**ATTEST:**

*Dianna Davis*  
**DIANNA DAVIS, City Clerk**

**[SEAL]**

