

**Ordinance No. 3355**

**An ordinance amending Chapter 7, Article I, In General, Section 7-2, License tax for itinerant merchants specifically prohibiting merchants from conducting business within 250 feet of a special event in which the City has entered into a contract authorizing such event; repealing all ordinances to the contrary and declaring an emergency.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:**

**SECTION I.** That Chapter 7, Business Regulations and Licenses, Article I, In general, Section 7-2, Itinerant Merchants, of the Code of Ordinances of the City of Broken Arrow, is hereby amended to read as follows:

**Sec. 7-2. - Itinerant merchants.**

It shall be unlawful for an itinerant merchant to engage in such business within the city limits without first obtaining a license therefore in compliance with the provisions of this section.

- (a) *Definitions.* For the purpose of this section, an "itinerant merchant" is defined as any person, firm, or corporation, whether as owner, agent, consignee, or employee, whether a resident of the city or not, who engages in a business of selling and delivering goods, wares, and merchandise within said city from a temporary or irregular location. This definition expressly includes persons who sell goods from an open air location, from a temporary stand, or from a vehicle.
- (b) *Responsibility for acquiring license.* The owner of the itinerant merchant business shall be responsible for acquiring the license. Provided that, if the owner fails to acquire such a license, the agents actually conducting the business within the city limits shall be responsible for acquiring the license. The license, once acquired, must be readily available for display by the itinerant merchant, and must be shown to any member of the public or to any agent of the city charged with the responsibility for enforcing the provisions of this section, upon any demand for such or display of the license.
- (c) *Application.* The city shall have application forms setting forth the information necessary for the issuance of an itinerant merchant license, and to allow the city to properly investigate each applicant. Such application shall include:
  - (1) Proof that the itinerant merchant has a valid sales tax number from the Oklahoma Tax Commission, together with an account for the payment of all applicable sales taxes and use taxes due as the result of the itinerant merchant's activities.
  - (2) The name or names of all person or persons having the right of management or supervision of the applicant's business during the time it is proposed to be carried on within the city limits, together with the actual address and the local address such person will use while engaged in such business.
  - (3) The capacity of the person applying for the application, whether as proprietor, agent or otherwise, and the name and address of the person, firm or corporation for whose account the business will be carried on. If such is a corporation, the

applicant will further set forth the date of incorporation, the state of incorporation, and the date such corporation was domiciled within the State of Oklahoma.

- (4) The applicant shall describe the location proposed to carry on its business as set forth in subsection 7-2(d) of this chapter, and the proposed duration of said business, together with the place or places other than the City of Broken Arrow wherein the applicant has conducted the business of an itinerant merchant within the six months next preceding the application.
  - (5) The applicant shall further describe the nature, character and quality of the goods, wares or merchandise to be sold or offered for sale and the proposed method of sale, together with a brief statement of the nature and character of the proposed advertising.
- (d) *Business location.* An itinerant merchant shall not conduct business from a location on the public right-of-way, nor within the sight triangle at any intersection of two public streets, nor within the sight triangle at the intersection of a public street with any private street or driveway nor within public access lanes or parking spaces which prohibit traffic flow, nor within 250 feet of a special event in which the City has entered into a Contract authorizing such event. An itinerant merchant shall not conduct business from any city park, except that an itinerant merchant may conduct business through a special events contract entered into with the city or from a location otherwise permitted by ordinance, nor from private property unless the owner of such private property grants permission. Itinerant merchants shall not conduct business from a location in front of the building line in any commercial district. If zoning of the location is not compliant with the intended use by the itinerant merchant, then a temporary use permit as set forth in the zoning ordinance will be required. No structure or accessory, including, but not limited to electrical or water meters, shall be placed upon any right-of-way. All structures and accessories shall be removed from the licensed premises within seven days of the permit expiring or if the business is no longer operating at the location, but still has a valid permit, the structure and accessories must be removed within seven days of the business closing.
- (e) *Amount of fee.* Each itinerant merchant shall pay a license fee as set forth in the Manual of Fees adopted by the Broken Arrow City Council for the length of the license. Permits are valid for a maximum of 180 days during a calendar year. No itinerant merchant shall be eligible to obtain a permit for more than 180 days out of a one-year period.
- (f) *Display of license.* The license issued under this chapter shall be posted conspicuously in the place of business named therein. In the event that an itinerant merchant desires to do business in more than one place within the city, separate licenses are required for each location and shall be posted conspicuously in each place of business.
- (g) *Reports.* Itinerant merchants shall provide upon request, proof of filing with the Oklahoma Tax Commission if such filing is required by state statute. Provided that, authorized city officials shall have the power and authority to enter the place of businesses of any itinerant merchant during normal business hours for the purpose of ascertaining the amount of sales made, and at the time have access to the books of such businesses.

- (h) *Suspension, revocation, expiration.* This license may be suspended or revoked in accordance with article II of this chapter or upon the conviction of the licensee, manager or supervisor of the business of a felony or conviction of a misdemeanor involving fraud or dishonesty, including, but not limited to fraud, larceny, burglary, robbery or embezzlement. The license shall expire by its own express term not later than 180 days after its issuance unless an earlier date is set forth on the license.
- (i) *Exceptions.* The following merchants are exempted from the provisions in this section:
  - (1) The mere delivery of goods to the buyer after the placement of an order at the merchant's permanent place of business;
  - (2) Sales by permanent merchants having fixed locations, when such sales are conducted by said merchant in the open air or from a stand immediately adjacent to said merchant's permanently fixed location;
  - (3) Any 501(c)(3) community-oriented charitable service organization which conducts sales as a part of an annual fund raiser;
  - (4) Sales by mobile ice cream, snow cone or beverage vendors who are required to have registered with the city under the food establishment code, provided that such vendors are in compliance with the provisions of subsection (d).
- (j) *Fee waiver.* Any itinerant merchant other than mobile ice cream, snow cone or beverage vendors whose business is regulated under the Broken Arrow Food Establishment Code, and who pays the fees thereunder, shall still obtain an itinerant merchant permit and pay fees for such permit.
- (k) *Penalty.* Violation of this section shall be punishable by a fine of not more than \$500.00.

**SECTION II.** Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

**SECTION III.** An emergency exists for the preservation of the public health, peace and safety, and therefore this ordinance shall become effective from and after the time of its passage and approval.

**PASSED AND APPROVED** and the emergency clause ruled upon separately this 21st day of July, 2015.

ATTEST:

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MAYOR

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(Seal) CITY CLERK

APPROVED:

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CITY ATTORNEY