

(Published in the Tulsa Business & Legal News,  
City of Bixby, Tulsa County, Oklahoma  
FEBRUARY 17, 2016.)

### **ORDINANCE NO. 2163**

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF BIXBY, OKLAHOMA, TITLE 3, TITLED "BUSINESS AND LICENSE REGULATIONS", CHAPTER 4, TITLED "ITINERANT VENDORS"; AMENDING SECTIONS 3-4-1 THROUGH 3-4-5 TO CLARIFY TERMINOLOGY, FURTHER REGULATE ITINERANT VENDORS WHO CONDUCT DOOR TO DOOR RESIDENTIAL SALES AND TO ESTABLISH A "NO KNOCK LIST"; AMENDING SECTION 3-4-8, TO INCREASE THE MAXIMUM PENALTY UPON CONVICTION FROM ONE HUNDRED DOLLARS (\$100) TO FIVE HUNDRED DOLLARS (\$500); REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BIXBY, OKLAHOMA:

*Section 1. That Bixby City Code, Title 3, Chapter 4, Sections 3-4-1 through 3-4-5 be and the same are now amended to read as follows:*

#### **"3-4-1: DEFINITIONS:**

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**ITINERANT VENDOR:** All persons, firms, partnerships, companies, corporations, as well as their agents and employees, who engage in the temporary or transient business of selling or offering for sale any goods or merchandise, or exhibiting the same for the sale or exhibiting the same for the purpose of taking orders for sale, or who engage in residential sales or door to door solicitations.

**PERMANENT:** A business, business facility or enterprise which has been in business for more than one hundred twenty (120) days, or a business which is operated upon real property or within an improvement to real property, such as a dwelling, an office, etc., where such improvement has and is being furnished with customary utilities, such as electricity, water and sewer. This term shall also include ownership of real property upon which the business is situated or, in the alternative, a rental or lease agreement executed for a period of not less than six (6) months with a beginning date prior to the commencement of business activity.

**RESIDENTIAL SALES OR DOOR TO DOOR SOLICITATIONS:** Any contact by any salesperson operating individually or representing any business entity, firm, company, or corporation, whether residing within or outside of the city limits of the city of Bixby, contacting residences within the city limits of the city of Bixby, for the purpose of selling stocks, goods or merchandise, or sample sales, or soliciting orders for such stocks, goods or merchandise.

**TEMPORARY:** Any such business transacted or conducted in the city for which definite arrangements have not been made for the hire, rental or lease of premises for at least one hundred eighty (180) days in or upon which such business is to be operated or conducted.

**TRANSIENT:** Any such business or any such itinerant vendor as may be operated or conducted by any persons, firms, companies or corporations, or by their agents or employees who reside away from the city or who have fixed places of business in places other than the city, or who move stocks of goods or merchandise or samples into the city with the purpose or intention of removing them, or any unsold portion, away from the city before the expiration of one hundred eighty (180) days.

**3-4-2: LICENSE REQUIRED:**

- A. It shall be unlawful and an offense 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 required in this chapter. 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 sale in the city goods or merchandise only after such itinerant vendor has fully complied with all provisions of this chapter and paid the license fees provided, which sum shall be compensation to the city for the services required of it and to enable the city to partially defray the expenses of enforcing the provisions of this chapter.
- B. Door to door solicitation, sales or residential door to door sales shall require a special itinerant vendor's license. Such license shall be good for a period of six (6) months, at which time it shall expire. The issuance of an itinerant vendor's license to persons conducting door to door sales or residential sales shall be limited to two (2) successive six (6) month periods within any twelve (12) month period. After the issuance of two (2) successive licenses, an itinerant vendor conducting door to door sales or residential sales must refrain from such further sales for a period of six (6) months before applying for another license.
- C. Itinerant vendors who are conducting door to door sales and/or residential sales shall be governed by the following prohibitions:
  1. It shall be unlawful and an offense for any person to engage in door to door solicitations at a residence or dwelling which is listed on the city clerk's "No Knock List", or upon which is plainly displayed to public view the words "No Soliciting," "No Solicitation," "No Trespassing," "Keep Out," or words of similar import, indicating such persons are not wanted on the premises. This prohibition shall not apply to any solicitor who is present by either invitation or consent of the residence's bona fide occupant.
  2. It shall be unlawful and an offense for any person to engage in door to door solicitations at a residence or dwelling where the premises is within a neighborhood regulated by a homeowners' association which has plainly displayed to public view a sign at each entrance to the neighborhood stating that door to door solicitations in the neighborhood are prohibited or otherwise indicating the residents of the neighborhood are not to be disturbed.

3. It shall be unlawful and an offense for any person to engage in door to door solicitations except between the hours of 8:00 a.m. and 7:00 p.m., in the absence of a specific consent, invitation or appointment from an occupant of the residence.
  4. It shall be unlawful and an offense for any person engaged in door to door solicitations to remain on the premises of a private residence or dwelling after the owner or occupant has requested that person to leave.
  5. It shall be unlawful and an offense for any person engaged in door to door solicitations to fail to prominently display, on the front of their person, an itinerate vendor's license identification card issued to them by the city of Bixby.
  6. Every person engaged in door to door solicitations shall have in their immediate possession a true and correct copy of their itinerate vendor's license and a true and correct photo identification card. It shall be unlawful and an offense for any person engaged in door to door solicitations to fail to exhibit, upon demand of any occupant of a residence or dwelling solicited or a law enforcement officer, their itinerate vendor's license or their photo identification card.
- D. The city clerk shall prepare and maintain a list of all residences or dwellings within the city whose occupants have registered with the city their desire to prevent door to door solicitations at their address. This list shall be known as the "No Knock List". Residents of the city who desire to have their addresses placed on the No Knock List may do so by contacting the city clerk's office. Once a residence is enrolled on the No Knock List, that address shall be listed for no more than two (2) years, after which a resident may re-enroll that address for a successive two (2) years. Solicitors must obtain a copy of the No Knock List from the city clerk's office at the time they obtain a license and are expressly prohibited from soliciting at any address listed on the No Knock List. This provision shall not apply to non-profit organizations, groups and associations.

### **3-4-3: APPLICATION FOR LICENSE:**

The itinerant vendor shall make application to the city clerk at least ten (10) days prior to the date of the vendor's contemplated sale or exhibit to be held in the city, which application shall be in the form of an affidavit, stating the full name and address of the itinerant vendor, the location of its principal office and place of business, the names and addresses of its officers if it is a corporation, and the partnership name and the names and addresses of all partners if such itinerant vendor is a partnership. The application must be accompanied by:

- A. A statement showing the kind and character of goods to be sold, or merchandise to be sold, offered for sale or exhibited.
- B. A certified copy of the charter if the itinerant vendor is a corporation, incorporated under the laws of the state.

- C. A certified copy of its permit or authority to do business in the state if the itinerant vendor is a corporation, incorporated under the laws of some state other than Oklahoma.
- D. 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 sales activities within the city.
- E. A bond in the sum of not less than five hundred dollars (\$500.00), executed by the itinerant vendor as principal, with a company authorized to do business in the state as a surety, which bond shall be payable to the city for the use and benefit of any person entitled thereto and conditioned that the principal and surety shall pay all damages to any person caused by or arising from or growing out of the wrongful or illegal conduct of the itinerant vendor while conducting the sale or exhibit in the city. The bond shall remain in full force and effect for the entire duration of the license permit and two (2) years thereafter.

#### **3-4-4: EXEMPTIONS:**

This chapter is not and shall not be applicable to the:

- A. Ordinary commercial traveler who sells or exhibits for sale goods or merchandise to parties engaged in the buying and selling and dealing in goods or merchandise. This exemption shall apply to manufacturers, representatives and persons similarly situated.
- B. Vendors of farm produce, poultry, stock or agricultural products in their natural state.
- C. Sales of goods or merchandise donated by the owners, the proceeds of which are to be applied to any charitable or philanthropic purpose.
- D. Vendors showing and selling their wares within a city park on days designated by the city council or the city manager for that purpose.
- E. Vendors who are catering to an entity, individuals or group who have obtained a user's permit for a city park for a limited period of time not exceeding three (3) days.

#### **3-4-5: FEE FOR LICENSE:**

The license fee for an itinerant vendor, including special itinerant vendor's licenses for door to door sales, shall in such amount as established by the city council."

*Section 2. That Bixby City Code, Title 3, Chapter 4, Section 3-4-8 be and the same is now amended to read as follows:*

#### **"3-4-8: PENALTY:**

Any person violating the provisions of this chapter shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500.00), excluding costs, fees and assessments. Each day a

violation continues shall be a separate offense. Additionally, a subsequent license or licenses shall not be issued to any temporary or itinerant vendor for a period of one year following the date of last violation and no license shall be issued to any temporary vendor or itinerant vendor who has fines or fees owing to the city."

*Section 3. PREEXISTING RIGHTS OF ACTION PRESERVED. The amendment or repeal of any ordinances by the enactment of this ordinance shall not impair, modify, alter, or affect any rights, right of action or cause of action, whether now pending in any court or not, which are now existing or which may arise or come into existence, before the date when this ordinance is effective.*

*Section 4. SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this ordinance or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance or any part thereof.*

*Section 5. REPEAL OF CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict with this ordinance be and the same are now expressly repealed.*

*Section 6. OPERATIVE CLAUSE. Following passage of this ordinance by the City Council, with separate approval of its Emergency Clause, this ordinance shall be operative on and after April 1, 2016.*

*Section 7. EMERGENCY CLAUSE. That an emergency is now declared to exist for the preservation of the public peace, health and safety and more particularly to protect residents in the City of Bixby from being unduly disturbed by itinerant vendors, by reason which this ordinance shall take effect immediately on and after its passage and approval.*

APPROVED in an open meeting of the Bixby City Council and PASSED by an affirmative majority vote of the entire membership of the City Council, to-wit: **5-YES, 0-NO, 0-ABSTAINING, 0-ABSENT**, on this 8<sup>th</sup> day of February 2016.

s/ John Easton  
Mayor of the City of Bixby, Oklahoma

APPROVED as an Emergency Measure ruled upon separately and PASSED by an affirmative majority vote of at least a four-fifths (4/5) of the entire membership of the Bixby City Council, to-wit: **5-YES, 0-NO, 0-ABSTAINING, 0-ABSENT**, on this 8<sup>th</sup> day of February 2016.

s/ John Easton  
Mayor of the City of Bixby, Oklahoma

(Seal)

ATTEST:

APPROVED:

s/ Yvonne Adams  
City Clerk

s/ Patrick T. Boulden  
City Attorney