
M E M O R A N D U M

DATE: April 5, 2002
TO: City Council Members
FROM: Russell Weeks
RE: Proposed Ordinance Relating to Sidewalk Entertainment and Art Displays
CC: Cindy Gust-Jenson, Rocky Fluhart, Margaret Hunt, David Dobbins, Stephen Goldsmith, Nancy Boskoff, Gary Mumford, Janice Jardine

This memorandum addresses a revised proposal by the Administration to enact a new ordinance relating to sidewalk entertainment and art displays. The proposed ordinance would allow artists to display their works or perform in certain zoning districts in Salt Lake City and in City parks.

The Administration proposed the ordinance after local artists approached the Mayor and asked that the City take an active role in encouraging artists to exhibit their artwork or perform on city Streets in commercially zoned areas and in parks. The proposed ordinance would allow artworks to be sold, and people performing to be compensated through donations from people viewing the performances. The proposed ordinance would require that artwork for sale be the original works of the artists selling them.

OPTIONS

- Adopt the proposed ordinance with new language suggested by The Downtown Alliance and supported by the Administration.
- Adopt the proposed ordinance as written.
- Do not adopt the proposed ordinance.

POTENTIAL MOTIONS

- I move that the City Council adopt the proposed ordinance with an amendment to Section 14.38.190, titled *Special Events*, to require artists to request permission from holders of special event permits to remain within the boundaries of special events during the events.
- I move that the City Council adopt the proposed ordinance as written.
- I move that the City Council not adopt the proposed ordinance.

MATTERS AT ISSUE/POTENTIAL QUESTIONS FOR CONSIDERATION

In reviewing the most recent draft of the proposed ordinance The Downtown Alliance suggested that Section 14.38.190, titled *Special Events*, contain language requiring artists to

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request permission from holders of special event permits to remain within the boundaries of special events during the events.

Aside from that, The Downtown Alliance supports the proposed ordinance, as does the Business Advisory Board. The Administration submitted copies of the proposed ordinance to both organizations at the City Council's request during a briefing in December.

Paragraph I of Section 14.38.140, titled *Location Restrictions*, limits artists and entertainers to staying at one location for no more than seven consecutive days.

Other changes to the proposed ordinance since it first was presented include:

- Requiring artists and entertainers apply for and pay for a permit to display and sell artwork or perform on sidewalks and in parks. The permit would cost \$5 and be renewed annually.
- Issuing civil citations "by an authorized City official" for violations of the ordinance. Three or more violations within a one-year period would constitute a misdemeanor.
- Allowing the City to impound a display "after consultation with a City Attorney," if an artist is issued a citation or "fails or refuses to remove any such display" in violation of City ordinances.

BACKGROUND

By way of background, City Council staff has included the following information taken from previous staff reports and memoranda.

The proposed ordinance would allow artists to exhibit and sell or perform in the following commercially zoned districts outlined in the City's zoning ordinance:

Neighborhood commercial, community business, community shopping, corridor commercial, Sugar House business, general commercial, central business, downtown support, downtown warehouse/residential, downtown secondary central business, and Gateway mixed-use.

The ordinance also would allow artists to exhibit and sell or perform in "areas within City-operated parks specifically designated by the Director of Public Services."

CURRENT ORDINANCES

To a large extent, current City ordinances prohibit the sale or display of items on city sidewalks and parks.

Ordinance 5.64.010, titled *Displaying Materials On Streets-Permit Required-Limitations*, reads in part:

It is unlawful for any person to engage in or carry on any business or occupation upon any street in the City, except in, upon or along any of the streets designated in this Chapter. No person shall, from any vehicle, stand or structure stationed, placed or located upon any street in the City by display or any advertising matter of any goods, wares, merchandise, fruits or vegetables in or about such vehicle, stand or

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structure or about such street, invite travelers upon such streets to transact business or purchase any such wares then displayed upon or near such street, nor shall any person leave or permit to remain upon any street in the City any goods, wares, merchandise, fruits or vegetables displayed or offered for sale.

Ordinance 15.08.170, titled *Selling Merchandise*, reads, “No person shall sell or offer for sale any merchandise, article or thing whatsoever, without the written consent of the mayor within any park or playground, or within a distance of sixty feet (60') of any boundary line of any public park or playground.”

However, current ordinances allow exceptions. Ordinance 5.64.010 allows the Mayor to grant written permission to people who own or possess real property abutting “any street” the use of “a portion of the street contiguous to such property to display or sell merchandise for such period of time as is specifically stated in such written permit.” Chapter 14.36, titled *Newsracks*, allows newspaper companies to place newspaper racks on city sidewalks in an “Expanded Central Business District” and other locations. The ordinance requires the companies to obtain permits and pay a fee of \$5 “per newsrack” to “partially defray the city’s cost of reviewing the certificate and the information contained therein.” Chapter 5.65, titled *Sidewalk Vending*, allows the sale of food, balloons and flowers from vending carts in an “Expanded Central Business District, the Sugar House Business District, Pioneer Park, Dinwoody Park, and Washington Square.” Vendors are required to obtain a business license and a “lease or revocable land use permit for the use of City property.” The lease or land use permit is \$175. The business license fee is \$70. In addition, cart vendors are required to obtain liability and property damage insurance. Finally, cart vendors are limited in where they can locate. According to Section 5.65.120:

- A. No more than one vending permit operating area shall be allowed for each three hundred thirty feet of block frontage on Main Street between South Temple and 400 South. On other blocks, one permit shall be allowed per block face except that if the block face exceeds six hundred sixty feet, one permit shall be allowed for each additional six hundred sixty feet of block frontage.
- B. There shall be two permit operating areas each allowed in Washington Square and Pioneer Park which shall include the adjacent sidewalk permit operating areas. There shall be one vending cart allowed in Dinwoody Park which shall include the adjacent sidewalk permit operating area.
- C. Vending carts may be located on private plazas and private open space within the expanded central business district. No more than one sidewalk vending cart shall be allowed per every forty thousand square feet of private plazas and private open space. At least one vending permit may be awarded for any private open space larger than twenty-four square feet.

PROPOSED ORDINANCE

The proposed ordinance would allow a maximum of three artists or performers for every 330 feet of block frontage. According to Planning Commission meeting minutes, the ordinance would allow six artists per block face or 12 artists on both sides of a street.

As said in the Administration’s transmittal letter, “locations designated by the ordinance may be occupied by interested parties on a first-come, first served basis.

Other pertinent regulations in the proposed ordinance:

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LOCATION RESTRICTIONS

No artist may perform or display in any of the following places:

- Within 10 feet of the intersection of the sidewalk with any other sidewalk, marked or unmarked crosswalk or mid-block crosswalk.
- Within the inner 8 feet of any sidewalk over 12 feet in width, “inner” meaning as measured from its farthest point from the curb.
- Within the inner three-quarters of the width of any sidewalk less than 12 feet in width, but in no event nearer than four feet from the inner edge of any sidewalk.
- Within five feet of an imaginary perpendicular line running from any building entrance or doorway to the curb line.
- Within five feet of any handicapped parking space, or access ramp.
- Within 10 feet of any bus stop.
- Within five feet of any office or display window.

Sidewalk artists also may not locate within 100 feet on the same linear block face of a door to a business displaying or selling artwork, if that business has direct access to the sidewalk.

It should be noted that the above location restrictions to a large extent mirror the restrictions on sidewalk vending carts in Chapter 5.65.

REMOVAL OF DISPLAYS AND HEARINGS

The proposed ordinance allows the City to remove displays of artwork in emergencies or in instances where the City determines that a display does not comply with the proposed ordinance or other City ordinances.

HOLD HARMLESS CLAUSE

Section 14.38.050 of the proposed ordinance says in part, “Anyone using Available City Property for sidewalk entertainment or sidewalk art display shall indemnify, defend and hold the City and its officers and employees harmless for any loss or damage, including attorney’s fees, arising out of the use of such property.”

COURT CASES

Other apparent reasons for the proposed ordinances are two court decisions. One decision was from the U.S. Second Circuit Court of Appeals in 1996 in a lawsuit by painters and other artists against New York City. In *Bery vs. the City of New York* the court determined that New York City’s “requirement that appellants (the artists) be licensed in order to sell their artwork in public spaces constitutes an unconstitutional infringement of their First Amendment rights.” New York City appealed the decision to the U.S. Supreme Court, but the court declined to hear the appeal. In another decision earlier this year, *Lederman vs. Rudolph Guiliani and the City of New York*, the U.S. District Court for the Southern District of New York determined that painters and other artists did not need a license or permit to sell their work in land administered by the New York City Parks Department because New York City law and regulations exempted book vendors from having to obtain licenses and permits to sell books. The court held that “art

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vendors are subject to only those vending restrictions which are applicable to book vendors.”

DISCUSSION

It should be noted that, according to research provided by the Administration to City Council staff, the cities of Boise; Portland; Cambridge, Massachusetts; and the Pike’s Place Market Historical Commission in Seattle required people who sell items on sidewalks to obtain permits or licenses. The Boulder, Colorado, Downtown Management Commission also required permits for most activities. The Boulder Commission exempts the permit requirement in the Boulder Mall downtown “for performers who do not use amplification, juggle fire or sharp objects, or use equipment over 6-feet above the Mall ground.” Performers who do those things are required to obtain a permit and “must have liability insurance in the amounts of \$150,000/\$600,000 listing the City of Boulder as an additional insured party.”

It is likely that during City Council consideration of the proposed ordinance that someone will raise the U.S. Second Circuit Court of Appeals decision in *Bery vs. the City of New York*. No one on the City Council staff is a lawyer, so no one on the staff feels qualified to outline implications that case, and the U.S. District Court decision in *Lederman vs. Rudolph Guiliani*, may have on the proposed ordinance and the City.

However, it is interesting to note that in a footnote on Page 10 of the attached *Bery* case the appeals court says:

Even if the City were to adhere to a licensing system to regulate street art sales, there exist less intrusive means of issuing the licenses: one *amicus* suggests a rotating first-come, first-served lottery system for assigning a limited number of licenses ... the system employed by San Francisco might provide a model; certain areas are set aside for art sales and a weekly lottery assigns spots. The district court made no mention of these potential alternatives.

The San Francisco *Street Artist Ordinance* might be considered a benchmark ordinance because it appears to have been in effect for more than 25 years. It places the administration of the street artists program under San Francisco’s Arts Commission and the commission’s executive director. It requires a permit, and allows the San Francisco Board of Supervisors to designate areas “in or on any public street or public place where any street artist or craftsman certified pursuant to the provision of this ordinance may sell ... any art of craft item of his own creation.” According to the Administration, one downside to the San Francisco ordinance requires a significant staff and budget to administer.