
M E M O R A N D U M

DATE: April 4, 2003
TO: City Council Members
FROM: Russell Weeks
RE: Briefing: Proposed Ordinance Regulating Mobile Ice Cream Vendors
CC: Cindy Gust-Jenson, Rocky Fluhart, David Nimkin, Ed Rutan, Alison Wehyer, David Dobbins, Roger Evans, Edna Drake, Larry Spendlove, Gary Mumford, Nazar Mohamed

This memorandum is intended to address a proposed ordinance to enact regulations for mobile ice cream vending trucks. The City Council first was briefed on the proposed ordinance in July 2002. A City Council Subcommittee met in August and on November 19 to discuss the proposed ordinance. The Subcommittee then forwarded the proposed ordinance to the full City Council for a further briefing at the Council's work session January 7. The proposed ordinance includes recommendations by the Council Subcommittee and the full City Council as discussed at the January 7 work session.

POTENTIAL OPTIONS

- Forward the proposed ordinance for formal consideration.
- Do not forward the proposed ordinance for consideration.
- Forward the proposed ordinance and schedule a public hearing on the proposed ordinance.
- Return the proposed ordinance to the City Attorney's Office for further amendment if issues arise during the April 8 briefing.

ISSUES/POTENTIAL QUESTIONS FOR CONSIDERATION

1. If the City Council forwards the proposed ordinance for formal consideration, the Council may wish to consider whether companies that would be regulated by the ordinance be notified of the Council's intent to consider the ordinance and whether a public hearing should be held. It has been the City Council's practice when a new fee is proposed to request that the Administration notify parties affected by the fee and to hold a public hearing.
2. The proposed ordinance contains the following revisions based on the City Council's discussion January 7:
 - In Section 5.64.580, titled *Application Fee Required*, the fee for an ice cream vehicle operator's license has been reduced from the \$80 proposed in earlier drafts to \$30.

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- In Section 5.64.640, titled *Driver's Qualifications*, people who have been convicted of two or more felonies are barred from obtaining an ice cream vehicle operator's license. Earlier drafts barred people convicted of three or more felonies.
- In Section 5.64.720, titled *Noise Restrictions*, two items have been revised. In Paragraph B the latest an ice cream vehicle may "play or employ any sound" from the vehicle is 8 p.m. Earlier versions prohibited playing sounds after 7 p.m. In Paragraph C the limit of which a sound may be played has been reduced to 50 feet from an ice cream vehicle. Earlier versions limited the sound to 330 feet.
- In Section 5.64.740 titled, *Vehicle Inspection Prior to Licensing – Fee Required*, the cost of the inspection fee has been reduced from a total cost of \$50 per vehicle to \$25 per vehicle.

DISCUSSION/BACKGROUND

The proposed ordinance would add mobile ice cream vending truck companies to businesses regulated by Salt Lake City. It is City Council staff's understanding that various community councils and residents have sought for some time to have ice cream vending trucks regulated in at least some manner. Of particular concern are potential safety hazards created by children's attraction to the ice cream vending trucks and the level of music coming from ice cream trucks as they travel through residential neighborhoods. There also apparently have been complaints about mobile ice cream vendors in City parks. The complaints largely appear to have involved the length of time vendors stay in one location in City parks while playing music from amplified systems.

As mentioned earlier, the City Council first was briefed on the proposed ordinance in July 2002. A City Council Subcommittee met in August and on November 19 to discuss the proposed ordinance. After its November 19 meeting the Subcommittee made several recommendations and forwarded them to the full City Council for a further briefing at the Council's work session January 7. After the January 7 briefing the City Attorney's Office revised the proposed ordinance, and the Administration sent the revised document to the City Council for further consideration.

To review, the Subcommittee – comprised of City Council Members Eric Jergensen, Jill Love, and Van Turner – said it was comfortable with the bulk of the proposed ordinance that would regulate the mobile ice cream vendors and vending equipment. However, the Subcommittee focused on two aspects of the proposed ordinance – fees and noise restrictions for the operators of mobile ice cream vending trucks.

FEES

Under current ordinances, ice cream truck vendors located in Salt Lake City are required to obtain a City business license. According to the City Attorney's Office, the City acknowledges other cities' business licenses under City Code 5.04.040-C titled *Reciprocal Agreements*. However, the proposed ordinance would require drivers for mobile ice cream vending companies located in other cities to obtain ice cream truck operators' licenses. Ice cream vending trucks also would be inspected by Salt Lake City.

Besides the \$70 business license fee for mobile ice cream vending companies located in Salt Lake City, the proposed ordinance would require that each person who would drive a vending vehicle to obtain an ice cream truck operator's license. Each applicant for an operator's

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license would pay a \$30 application fee. Under the revised proposed ordinance, companies that own ice cream vehicles also would pay an annual inspection fee of \$25 per vehicle.

According to the Administration, the Business Licensing Division would conduct the vehicle inspections. The inspections would involve checking for compliance with ordinance regulations involving the presence of back-up warning devices, flashing lights, swing arms, and other items.

The proposed ordinance also would require a business license applicant to obtain a health permit from the Utah Department of Agriculture. According to the Administration, the Salt Lake Valley Health Department stopped inspecting mobile ice cream vending vehicles two years ago. The Utah Department of Agriculture continues to inspect the refrigerated compartments in the vehicles but nothing else, according to the Administration.

NOISE RESTRICTIONS

The Subcommittee agreed on three items pertaining to noise restrictions:

It agreed to recommend amending Section 5.64.720 B to change the word “seven” to the word “eight” to allow mobile ice cream vending vehicles to operate an extra hour, particularly during the summer.

The Subcommittee also agreed to let stand a paragraph in Section 5.64.720 that would prohibit the playing of “any sound” while an ice cream vehicle is stationary. It was the Subcommittee’s understanding that the paragraph not only would regulate mobile ice cream vending vehicles on streets but also in City parks.

After the City Council discussion on January 7, the City Attorney’s Office significantly altered Paragraph C of Section 5.64.720. As mentioned, the original proposed ordinance allowed ice cream vending vehicles to play sounds, “in such a manner that such sound is plainly audible at more than 330 feet from such vehicle.” However, a representative of the Salt Lake Valley Health Department informed the Administration that the 330-foot limit exceeded the limit allowed by Salt Lake County Health regulations. According to the Administration, the Salt Lake Valley Health Department views the audio systems used in ice cream vending vehicles as tape players that fall under the county regulation restricting sound from tape players to 50 feet a sound’s source. Given that, the Attorney’s Office revised the proposed ordinance to comply with Health Department regulations.

DRIVER’S QUALIFICATIONS

At the January 7 briefing, the City Council addressed an issue in Section 5.64.640 titled *Driver’s Qualifications*. Part of the section prohibited a person convicted of three or more felony crimes from obtaining an operator’s license. The revised ordinance would reduce the prohibition from obtaining an operator’s license from three or more felony convictions to two or more. In effect, the revision would allow the City to issue an operator’s license to a person convicted of one felony. However, the revised ordinance retains an appeal process before a hearing officer if an applicant can prove “by a preponderance of evidence” that an applicant with more than one felony conviction has reformed his or her character “so as to pose no threat to members of the public.”

OTHER PERTINENT ITEMS

The proposed ordinance would enact several requirements (Section 5.64.730) for a mobile ice cream vending vehicle and its operation. Requirements include:

- A clearly audible back-up warning device that will activate whenever the vehicle is shifted into reverse.
- At least two flashing yellow beacons on the vehicle’s roof that will activate “whenever merchandise is being sold, offered for sale or displayed for sale.”
- An operable swing-arm attached to its left side of “a type, size, and description approved by the City.” The arm would be activated whenever the vehicle stops to sell, offer to sell or display merchandise.
- A prohibition of selling items on streets where the speed limit is more than 25 miles per hour. Salt Lake City generally has three categories of streets – local, collector, and arterial. The limit generally would confine selling ice cream to local streets. Collector and arterial streets generally have speed limits higher than 25 miles per hour. (Council staff has attached a street map to help show which streets would be available to ice cream vending trucks.)
- A requirement that the vehicle be completely stopped and parked before selling or displaying wares.
- A prohibition against moving the vehicle backwards to sell or display merchandise.

Besides the prohibition of a person convicted of two or more felonies, other regulations pertaining to drivers’ qualifications include prohibitions from the following to obtain an operator’s license:

- People under age 21.
- Anyone required to register as a sex offender.
- Anyone convicted of a crime involving moral turpitude, narcotic or dangerous drugs, and a felony conviction for an offense against a person or property within a five-year period of the time of the permit application.
- Anyone convicted of reckless driving or driving a vehicle while under the influence of alcohol or a controlled substance or convicted of being in or about a vehicle while under the influence of alcohol or a controlled substance with the intent of driving the vehicle within a five-year period of the time of the permit application.

Applicants for an operator’s license would be required to provide the following information.

- An employment history dating back three years from the time the application is filed.
- A history dating back five years from the time of the application to indicate whether the applicant has ever had any professional or vocational license or business license or permit “denied, revoked or suspended.” The applicant also would have to say why any of those licenses were denied, revoked or suspended and provide a copy of the order from the agency or government that took the action.
- A history dating back five years from the time of the application of all criminal convictions or no-contest pleas to criminal complaints.

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- The names and addresses of three residents of Salt Lake City “who have known the prospective applicant for a period of thirty days and who “will vouch for the sobriety, honesty and general good character of the applicant.”
- A photograph and two sets of fingerprints taken at the Police Department headquarters.

A couple of items might be noted:

The application requirements and driver’s qualifications in the proposed ordinance are almost identical to application requirements and driver’s qualifications in the section of the City Code regulating taxicabs.

The insurance requirements in the proposed ordinance are the same general liability requirements as those of sidewalk vendors.

MODEL ORDINANCE

After the January 7 meeting, Don Ganser, the owner of a company involved in mobile ice cream vending, sent Council staff a model ordinance prepared by the International Association of Ice Cream Vendors Safety Committee.

Aside from higher fees and drivers’ qualifications, the proposed ordinance appears to comport with much of the model ordinance. Some similarities are:

Model Ordinance – Signal lamps mounted at the same level and as high and as widely spaced laterally as practicable. The lamps shall be five to seven inches in diameter and shall display two alternately flashing red lights visible at 500 feet to the front and rear in normal sunlight upon a straight level highway.

Proposed Ordinance – The motorized vehicle shall have at least two flashing yellow beacons on the roof of the vehicle, one at the front and one at the rear, at least one of which is visible from all side of the vehicle. The beacons shall be activated whenever merchandise is being sold, offered for sale, or displayed for sale.

Model Ordinance – A slow signal arm that can be extended horizontally from the left side of the truck ...

Proposed Ordinance – The motorized vehicle shall have an operable swing-arm attached to its left side. This swing-arm shall be of a type, size, and description approved by the City ...

Model Ordinance – An outside passenger side mirror that provides visibility to the right side and to the rear of the vehicle.

Proposed Ordinance – The motorized vehicle shall have a convex mirror mounted on the front of the vehicle so that the driver, in a normal driving position, can see the area in front of the vehicle that is obscured by the hood.

Model Ordinance – A sign or decal with the business address and telephone number of the business license holder printed on the side of the vehicle in letter of not less than two inches in height.

Proposed Ordinance – In addition to the foregoing, there shall be printed on both sides of the exterior of the vehicle being used for vending, in letters or numbers at least 3 inches high and 3 inches wide the name and current business telephone number of the mobile ice cream vending business for which said vehicle is operating and the Salt Lake City business license identification number of the business.

Model Ordinance – Every ice cream truck shall be inspected by the City Police Department once each year prior to its use ...

Proposed Ordinance – Prior to the use and operation of any vehicle under the provisions of this Chapter, and annually thereafter while being operated by the business licensee hereunder, the vehicle shall be thoroughly examined and inspected by an authorized representative of the City ...

Model Ordinance – No person shall vend in residential neighborhoods before 10 a.m. or after one-half hour after sundown, not to exceed 10 p.m. during daylight savings time.

Proposed Ordinance – No person shall use, play or employ any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound from an ice cream truck ... earlier than ten a.m., nor later than eight p.m. or one-half hour after sunset, whichever comes first.

Model Ordinance – A person shall not vend on streets where the speed limit exceeds 30 miles per hour.

Proposed Ordinance – Retail merchandise may not be sold, offered for sale, or displayed for sale from or on motorized vehicles on public streets where the speed limit exceeds 25 miles per hour.

Model Ordinance – A person shall vend only when the ice cream truck is lawfully parked or stopped. A person shall vend only from the side of the truck away from moving traffic and as near as possible to the curb or edge of the highway.

Proposed Ordinance – The operator of the motorized vehicle shall sell, offer to sell, or display for sale retail merchandise only when the vehicle is completely stopped and lawfully parked, and shall sell only from the rear or side of the vehicle nearest to the curb or edge of the roadway.

Model Ordinance – The driver of an ice cream truck shall not back the truck to make or attempt a sale.

Proposed Ordinance – The motorized vehicle shall not be moved backwards in order to sell, offer to sell, or display for sale retail merchandise.

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