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## CITY COUNCIL STAFF REPORT

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**Date:** August 1, 2003

**Subject:** Proposed Ordinance: Amendments to Temporary Use Section of the Zoning Ordinance Relating to Seasonal Item Sales (Snow Cone and Shaved Ice Structures)

**Affected Council Districts:** All

**Staff Report By:** Russell Weeks

**Administrative Dept. and Contact Person:** Planning Commission, Doug Dansie

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### **KEY ELEMENTS:**

The proposed ordinance is a text change to the Zoning Ordinance and will require a public hearing before the City Council formally takes action on it.

The proposed ordinance would do three things:

- It would amend Section 21A.42.070.B to clarify that Christmas tree and other seasonal item sales are limited to 45 days per calendar year.
- It would enact a Paragraph K to Section 21A.42.070 to allow snow-cone and shaved-ice huts as a temporary use in districts zoned as Community Business (CB), Community Shopping (CS), Corridor Commercial (CC), General Commercial (CG), Sugar House Business District (CSHBD), Light Manufacturing (M-1), Heavy Manufacturing (M-2), Central Business District (D-1), Downtown Support District (D-2), Downtown Warehouse/Residential (D-3), Downtown Secondary Central Business District (D-4), Gateway Mixed Use District (GMU), Research Park (RP), Business Park (BP) and Mixed Use (MU). The spectrum of districts listed runs throughout Salt Lake City and would affect all City Council Districts.
- It would amend Section 21A.62.040 to include two new definitions, “Seasonal Item Sales” and “Snow cone and shaved ice hut.”

It should be noted that Section 21A.42.020 – another part of the Zoning Ordinance chapter regulating temporary uses – says in part, “This chapter is intended to regulate all temporary uses conducted on private property.” (Please see attached ordinance.) The proposed amendments to Section 21A.42.070, then, appear to regulate snow-cone and shaved-ice huts on private property.

It should be noted that the proposed paragraph 21A.42.070.K would allow sellers of snow cones and shaved ice to operate between May 15 and September 15. The temporary buildings from which the snow cones or shaved ice would be sold would have to be either specific commercial models or their “equivalent, as determined by the zoning administrator.” In addition, the proposed ordinance would prohibit “Inflated signs, banners or other signage exceeding the regulation of the applicable zoning districts” to advertise the location of a snow-cone hut.

It also should be noted that the definition of “Seasonal Item Sales” would allow “fresh farm produce, sold within the intermountain region harvest season” to be sold under Section 21A.42.070.B titled *Christmas Tree and other Seasonal Item Sales*. However, another part of the definition says, “Prepared food is not a seasonal item.”

**POTENTIAL OPTIONS:**

- Move the proposed ordinance forward and set a date for a public hearing.
- Suggest amendments to the proposed ordinance before moving it forward for a public hearing.

**POTENTIAL MOTIONS:** If the City Council forwards the proposed ordinance for a public hearing and formal action, staff will prepare potential motions.

**MATTERS AT ISSUE/POTENTIAL QUESTIONS FOR CONSIDERATION:**

Should temporary structures to sell snow cones or shaved ice be allowed in downtown zoning districts?

Should the definition of “Seasonal Item Sales” include language that would allow “fresh farm produce, sold within the intermountain region harvest season” to be sold under Section 21A.42.070.B titled *Christmas Tree and other Seasonal Item Sales*? According to the Administration, the current definition of “Seasonal Item Sales” was intended to allow the sale of seasonal “fresh farm produce.” However, the original definition may not have been specific enough.

If the answer to the second question is yes, should the City initiate regulations to describe the kinds of stands where fresh farm produce could be sold?

**DISCUSSION/BACKGROUND:**

As mentioned in an earlier section of this report the proposed ordinance appears to address only temporary uses such as snow-cone and shaved-ice structures on private property.

According to the Administration’s transmittal, temporary structures such as snow-cone huts historically have not been allowed in Salt Lake City. However, when the Zoning Ordinance was rewritten, language in the Temporary Uses section included a category titled “other seasonal item sales.” Through administrative interpretation of the category, snow-cone huts have been allowed as “other seasonal item sales” for the last two or three years. In addition, 21A.42.070.B titled *Christmas Tree And Other Seasonal Item Sales* limits temporary uses “to a period not to exceed 45 days.” According to the Administration, some interpretations of the clause have led to the renewal of seasonal item sales every 45 days.

The proposed ordinance would amend Section 21A.42.070.B to clarify that Christmas tree and other seasonal item sales are limited to 45 days per calendar year.

The ordinance also would add a new paragraph Section 21A.42.070 to allow snow-cone and shaved-ice huts as a temporary use in districts zoned as Community Business (CB), Community Shopping (CS), Corridor Commercial (CC), General Commercial (CG), Sugar House Business District (CSHBD), Light Manufacturing (M-1), Heavy Manufacturing (M-2), Central Business District (D-1), Downtown Support District (D-2), Downtown Warehouse/Residential (D-3), Downtown Secondary Central Business District (D-4), Gateway Mixed Use District (GMU), Research Park (RP), Business Park (BP) and Mixed Use (MU). The new paragraph also would allow sellers of snow cones and shaved ice to operate between May 15 and September 15 instead of limiting sales for 45 days in the calendar year. And it would require temporary buildings from which the snow cones or shaved ice would be sold to be either specific commercial models or their “equivalent, as determined by the zoning administrator.”

In its transmittal, the Administration noted in several locations that most businesses involving selling snow-cones or shaved ice have said they hoped to locate temporary structures in the parking lots of other commercial businesses such as grocery stores. However, the proposed ordinance would allow snow-cone or shaved-ice huts in downtown zoning districts, in part because there seemed to be no particular reason to prohibit them from downtown zoning districts, according to the Administration. The City Council may wish to consider whether it would rather limit the temporary structures to the zoning districts where sellers of snow cones and shaved ice said they want to locate and not include the downtown zoning districts.

One reason the City Council may wish to consider not including downtown zoning districts involves the presence of sidewalk vending carts. Council Members may recall that the ordinance regulating sidewalk vending generally restricts mobile vending carts to an “expanded central business district” bordered by :

1. North Temple Street on the north, from Sixth West Street to Third West Street;
2. Third West Street on the east, from North Temple Street to South Temple Street;
3. South Temple Street on the north, from Third West Street to Second East Street, on the south side of South Temple Street only;
4. Second East Street on the east from South Temple Street to Sixth South Street;
5. Sixth South Street (north side only) on the south from Second East Street to Sixth West Street.

The vending ordinance also allows mobile vending carts to locate in the Sugar House Business district. In addition, the vending ordinance allows mobile vending carts to locate “on private plazas and private open space on non-residentially zoned property within the expanded central business district.” The vending ordinance allows vendors to sell one or a combination of “food for immediate consumption, including beverages, inflated balloons, fresh cut flowers, and daily or monthly news publications.” If snow cones or shaved ice is considered “food for immediate consumption,” the cones could be sold by a sidewalk vendor.

The locations of mobile vending carts were restricted for two reasons: 1.) The carts were considered helpful to promoting a vibrant downtown for pedestrians. 2) Some neighborhoods in the City opposed their presence.

Given the location restrictions for mobile vending carts, the City Council may wish to consider whether it would create an atmosphere of unfair competition to allow snow-cone or

shaved-ice huts in locations where vending carts cannot locate and also allow snow-cone or shaved-ice huts in locations where the vending carts are permitted to operate, particularly if the snow-cone or shaved ice huts sell “food for immediate consumption.”

Finally, the proposed ordinance includes in the definition of “Seasonal Item Sales” language that would allow “fresh farm produce, sold within the intermountain region harvest season” to be sold under Section 21A.42.070.B titled *Christmas Tree and other Seasonal Item Sales*. The definition makes clear that “Prepared food is not a seasonal item.” According to the Administration, the current definition of “Seasonal Item Sales” was intended to allow the sale of seasonal “fresh farm produce.” However, the original definition may not have been specific enough.

The ordinance does not appear to address how fresh farm produce would be sold. According to the Administration, structures for sales of fresh farm produce are not defined, and sales of farm produce have not been a problem. However, the City Council may wish to consider whether – given regulations for snow-cones and shaved-ice structures in the proposed ordinance, regulations of the structure of mobile vending carts, and regulations for the structure of sidewalk art stands – it is in the public interest to require some sort of guideline for structures to sell farm produce.

**Cc:** Cindy Gust-Jenson, Rocky Fluhart, David Nimkin, Alison Weyher, Louis Zunguze, David Dobbins, Gary Mumford, Doug Dansie

**File Location:** Downtown, Small Business