
M E M O R A N D U M

DATE: January 2, 2003
TO: City Council Members
FROM: Russell Weeks
RE: Proposed Ordinance Regulating Mobile Ice Cream Vendors
– Subcommittee Recommendations
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 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 has decided to forward the proposed ordinance to the full City Council for a further briefing at the Council’s work session January 7.

The Subcommittee has proposed some changes to the proposed ordinance. However, during preparation of this memorandum City Council staff was informed by the Administration that one of the Subcommittee’s recommendations – retaining a restriction in which sound from a mobile ice cream vending vehicle can be plainly audible at no more than 330 feet from the vehicle – does not comport with Salt Lake Valley Health Department noise regulations. The Administration also has apparently been notified by the Salt Lake County District Attorney’s Office that regulations adopted by boards of health supersede municipal regulations in matters involving noise restrictions. The Administration is expected to address the issue during the January 7 briefing.

ISSUES/POTENTIAL QUESTIONS FOR CONSIDERATION

- The City Council may wish to clarify with the Administration whether sound decibel levels should be the standard of measuring noise instead of linear feet.
- The City Council may wish to consider whether driver’s qualifications should be more restrictive than the ones in the proposed ordinance.
- The City Council may wish to consider whether – if the proposed ordinance is amended – 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.

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- Over the last five years the City has made efforts to quantify licensing and regulatory costs and charge at least a percentage of the costs to those who are licensed and regulated. Given apparent differences in licensing and regulatory rates for professions that seem to have some similar components, the City Council may wish to request that the Administration review and compare the fees and the percentage of administrative costs covered by each.

SUBCOMMITTEE RECOMMENDATIONS

The Subcommittee was comprised of City Council Members Eric Jergensen, Jill Love, and Van Turner. The Subcommittee met twice – on August 15 and November 19 – with members of the Administration to review the proposed ordinance. The owner of one ice-cream vending company – Dad’s Ice Cream – also attended the August 15 meeting.

Overall, the Subcommittee 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

The ordinance proposes:

Three fees – a standard \$70 business license; an \$80 operator’s license fee; and a \$25 vehicle inspection fee that would be charged every six months because the ordinance contemplates two inspections per year.

The Subcommittee recommended that the vehicle inspection fee be cut to one \$25 fee based on one inspection per year. (Section 5.64.740) It is the Subcommittee’s understanding that the Division of Building Services and Licensing would inspect vehicles for conformance with vehicle safety requirements listed in the proposed ordinance. The inspection would not include refrigeration systems. Those inspections are done by the Utah Department of Agriculture.

The Subcommittee also recommended exploring a lower fee for an ice cream truck operator’s application. Section 5.64.580 says, “At the time the ice cream truck operator’s application is filed, the applicant shall pay to the Business License Office a fee, in an amount determined by the Mayor or his or her designee, but not to exceed eighty dollars (\$80.00).

According to the Administration, the \$80 fee would pay the costs of an applicant’s background check. The check would include research of an applicant’s local criminal history, Utah Bureau of Criminal Identification records, Federal Bureau of Investigation records, and driver’s license records. The fee also would cover the cost of obtaining fingerprints and issuing an identification card with a photo of the ice cream vending truck operator.

A couple of things should be noted. First, the application requirements and driver’s qualifications in the proposed ordinance are identical to application requirement and driver’s qualification in the City’s ordinance regulating taxicabs. However, Section 5.72.74 titled *Application Fee Required* in the ordinance regulating taxicabs sets the cost of the application fee for a taxi driver’s license at “no more than \$30.” City ordinances also set the cost of issuing an identification card to solicitors – including those who sell door-to-door – at \$25. Second,

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ordinances regulating mobile ice cream vending businesses in Bountiful and West Valley City require mobile ice cream vending truck drivers to obtain their own copies of criminal record reports from the State Bureau of Criminal Identification at a cost of \$10. West Valley City also charges a \$25 fee for vendors to obtain a “work card.”

The Subcommittee suggested contacting Bountiful and West Valley City to see how many mobile ice cream vending truck drivers a year apply for permits to operate in their respective cities, and, after that, multiplying by 1.5 to determine an approximate cost to Salt Lake City, if the City charged an application fee of \$30 for ice cream truck operator’s licenses instead of \$80. However, Bountiful officials indicated that Bountiful issued one ice cream truck vendor license in the past year, and West Valley City officials said it would be difficult to obtain a count of the number of mobile ice cream vendor licenses it issued.

Consequently, Council staff contacted Don Ganser, who owns Dad’s Ice Cream and a number of ice cream vending vehicles. He estimated that about 100 mobile ice cream vending vehicles operate in Salt Lake County. Of that number, between 30 and 50 vending vehicles operate in Salt Lake City.

Given that, an \$80 charge for an application fee would result in about \$4,000 in application fees. (\$80 x 50 operators). If the proposed ordinance were amended to charge the same application fee as taxi drivers, the fee would result in about \$1,500 in application fees. (\$30 x 50 operators). The lesser fee probably would result in a potential City subsidy of about \$2,500, if the number of mobile ice cream vending vehicle operators is correct.

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 full text of Section 5.64.720 currently reads:

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:

- A. When the ice cream truck is stationary;
- B. Earlier than ten a.m., nor later than seven p.m. or one-half hour after sunset, whichever occurs first. Sunset shall be determined on any particular day by the time listed that day in any newspaper of general circulation in Salt Lake County;
- C. In such a manner that such sound is plainly audible at more than 330 feet from such vehicle; or
- D. Along the same block face traveling in either direction on the street more than once every two consecutive hours.

The Subcommittee agreed to let stand two items in the section – items A and C.

The Subcommittee agreed to let item A stand because it was the Subcommittee’s understanding that item A not only would regulate mobile ice cream vending vehicles on streets but also in City parks.

The Subcommittee’s decision to let Item C stand was based to a certain extent on the Administration’s position that linear feet could be used as a limit to how far sound could travel.

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Other's – the Salt Lake Valley Health Department and a Salt Lake City constituent – have argued that Item C does not mesh with Salt Lake City Code and Health Department regulations in part because the City Code and Health Department regulations restrict sound based on decibel measurements.

Again, during preparation of this memorandum the Administration informed Council staff that the Salt Lake County District Attorney's Office informed the Administration that the 330-foot limit does not comport with Salt Lake Valley Health Department noise regulations. The Administration also has apparently been notified by the Salt Lake County District Attorney's Office that regulations adopted by boards of health supersede municipal regulations in matters involving noise restrictions. Council Members may wish to clarify with the Administration the status of Item C at the briefing.

DRIVER'S QUALIFICATIONS

Section 5.64.640 titled *Driver's Qualifications* contains three items the Subcommittee was unable to address during its November 19 meeting. The section lists people who would not be issued a permit to operate a mobile ice cream vending vehicle or have a permit renewed. Included among those who would not receive a permit or have a permit renewed are:

“A.3. Any person who has been convicted of a crime involving moral turpitude, narcotic or dangerous drugs, a felony conviction for an offense against a person or property, unless a period of not less than five (5) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later;”

“A.6. Any person who has been convicted of three (3) or more felonies;”

The section ends with the following paragraph:

B. Notwithstanding the provision of subsection A3 or A6 of this Section, if the hearing examiner receives letters or testimony at a hearing, as provided in Chapter 5.02 of this Title, which proves by a preponderance of the evidence that the applicant has reformed his/her moral character so as to pose no threat to members of the public, the license shall be issued. Part of the letters or testimony used to establish the preponderance shall come from the applicant's parole officer, if the applicant is still on parole. Failure to provide a recommendation from the applicant's parole officer, if the applicant is on parole, shall be grounds to deny the request.

The language in the section is taken from City ordinances regulating taxicabs. The City Council may wish to consider whether, in the operation of mobile ice cream vending carts, any of the three paragraphs should be more restrictive – particularly the limit on the number of felony convictions.

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

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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.

According to statistics compiled by the Salt Lake City Police Department, the department's dispatch center has received calls on 87 incidents involving mobile ice cream vendors in the last five years – an average of 17.4 incidents per year. Here is a breakdown of calls to the dispatch center:

Suspicious behavior – 32.
Ice cream vendor as victim – 19.
Loudness – 16.
Traffic accident – 10.
Miscellaneous offenses – 7.
Officer traffic stop – 3.

Notes accompanying the figures indicate that many of the suspicious behavior incidents involved calls reporting ice cream vendors selling controlled substances. However, as of June 27, the research indicates that no criminal cases resulted from the calls. A copy of incidents involving ice cream vending vehicles between January 1998 to October 25, 2002 is attached.

The incidents involving mobile ice cream vendors as victims involve reports of assaults and robberies of mobile ice cream vendors, vandalism of ice cream vending vehicles and people following ice cream vending vehicles.

The incidents involving loudness centered on mobile ice cream vending vehicles playing loud music to attract potential customers. In some cases vendors were reported to have stayed at one location for extended periods of time as the music played and to have refused to turn down the music when residents have asked them to do so.

Traffic accident incidents involved vehicles colliding with other vehicles or vehicles colliding with fixed objects. The research notes indicate that there do not appear to be any incidents involving auto-pedestrian accidents directly related to mobile ice cream vendors. Miscellaneous offenses involved incidents such as trespassing, theft of ice cream money and disputes between ice cream vendors over territory. Three ice cream vending vehicles have been stopped by police officers enforcing traffic laws. There do not appear to be any reports of incidents involving sexual assaults on children by operators of mobile ice cream vending vehicles.

PROPOSED ORDINANCE

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 mobile ice cream vending companies located in other cities to obtain ice cream truck operators' licenses for drivers and have ice cream trucks 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

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vending vehicle to obtain an ice cream truck operator's license. The license requires an administrative fee determined by the Mayor or his designee "but not to exceed \$80." The proposed ordinance would require each ice cream truck to be inspected "by an authorized representative of the City" every six months. There would be a \$25 fee for each inspection. The 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.

Perhaps the most prominent feature of the proposed ordinance is the information required in the operator application form (Section 5.64.600). Information required in the application would include:

- 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.
- 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.

The proposed ordinance would prohibit the following from operating a mobile ice cream vending vehicle:

- 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.
- Anyone convicted of three or more felonies.

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. However, Section 5.72.74 titled *Application Fee Required* sets the cost of the application fee for a taxi driver's license at "no more than \$30."

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The proposed ordinance also 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.
- 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.

It should be noted that the insurance requirements in the proposed ordinance (Paragraph 9) are the same general liability requirements as those of sidewalk vendors.

Section 5.64.740 of the proposed ordinance requires ice cream vending vehicles to be inspected every six months for compliance with the regulations for back-up warning device, flashing lights, swing-arm and other items. According to the Administration, the Business Licensing Division would conduct the inspections. The proposed fee for the inspections would be \$25 per truck "for each inspection." It should be noted that, at this time, the office at the Department of Airports which inspects ground transportation vehicles and taxicabs for inspections required by City ordinances does not charge for the inspections. However, taxicabs and other ground transportation vehicles that routinely operate at the airport pay fees for entering the airport. The fees help defray the cost of inspecting the vehicles.

Section 5.64.720 titled *Noise Restrictions* would limit the use of amplified music or other noises. Limitations include:

- No music while an ice cream vehicle is stopped.
- No playing of music earlier than 10 a.m. or later than 7 p.m. or a half-hour after sunset, "whichever occurs first."
- No playing of music in a way that the sound can be heard more than 330 feet away.
- No playing of music along the same block face traveling in either direction on a street more than once every two consecutive hours.

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