
M E M O R A N D U M

DATE: May 8, 2003
TO: City Council Members
FROM: Russell Weeks
RE: Public Hearing: 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, Nazar Mohamed, Clark Cowley

This memorandum is intended to address a proposed ordinance to enact regulations for mobile ice cream vending trucks. The City Council is scheduled to hold a public hearing on the proposed ordinance at its May 13 meeting. Representatives of the International Association of Ice Cream Vendors have contacted Council staff since the Council's final briefing on the issue April 8. Two Association representatives indicated that they intend to attend the public hearing and speak to the issue. Area ice cream vendors and City residents also are expected to speak. The Association also has submitted a letter to the City Council Chair that is attached to this memorandum. Council staff has included some options for Council consideration based on the letter.

The City Council first was briefed on the proposed ordinance in July 2002. A City Council Subcommittee met in August and on November 2002 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, 2003. The proposed ordinance includes recommendations by the Council Subcommittee and the full City Council as discussed at the January 7 work session and confirmed at the April 8 briefing.

POTENTIAL OPTIONS

- Adopt the proposed ordinance.
- Do not adopt the proposed ordinance.
- Adopt the proposed ordinance with the following amendments:
 1. That Paragraph F of Section 5.64.600 be deleted. (Please see Discussion/Background section of this memorandum.)
 2. That the words "thirty (30) days" in Paragraph 1 of Section 5.64.660 be replaced with the words "five (5) working days." (Please see Discussion/Background section of this memorandum.)
 3. That Section 5.64.730 titled *Use of Public Streets* include a requirement that ice cream vending vehicles have signs or decals on the vehicles' front and rear identifying the vehicle as an ice cream truck and containing the words "Children Crossing" in letters at least six inches high and visible at 200 feet on a level,

straight highway. (Please see Discussion/Background section of this memorandum.)

Potential Motions

- I move that the City Council adopt the proposal.
- I move that the City Council not adopt the proposal.
- I move that the City Council adopt the proposal with the following amendments:
 1. That Paragraph F of Section 5.64.600 be deleted. (Please see Discussion/Background section of this memorandum.)
 2. That the words “thirty (30) days” in Paragraph 1 of Section 5.64.660 be replaced with the words “five (5) working days.” (Please see Discussion/Background section of this memorandum.)
 3. That Section 5.64.730 titled *Use of Public Streets* include a requirement that ice cream vending vehicles have signs or decals on the vehicles’ front and rear identifying the vehicle as an ice cream truck and containing the words “Children Crossing” in letters at least six inches high and visible at 200 feet on a level, straight highway.
- I move that the City Council table the proposed ordinance for further discussion and final action on May 20.

ISSUES/POTENTIAL QUESTIONS FOR CONSIDERATION

1. Is it reasonable to omit a character reference requirement in Paragraph F of Section 5.64.600?
2. Is it reasonable to shorten from 30 days to five working days notifying in writing an ice cream vending business or ice cream vending vehicle driver about whether the Business License Administrator has approved or denied either kind of license? (It should be noted that the 30-day written notification comports with Resolution No. 8 of 2003 adopted by the City Council at its March 11 meeting.)
3. Should safety signage on ice cream vending trucks be enhanced beyond requirements already in the proposed ordinance?
4. The proposed ordinance contains the following revisions based on the City Council’s discussions January 7 and April 8:
 - 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.
 - 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.

After the April 8 meeting two representatives of the International Ice Cream Vendors contacted City Council staff. One of the representatives submitted a letter May 6 to the City Council Chair. The letter is attached to the memorandum. The letter contains the following suggestions pertaining to the proposed ordinance:

I. Ice cream vending vehicles should have signs or decals on the vehicles' front and rear identifying the vehicle as an ice cream truck and containing the words "Children Crossing" in letters at least six inches high and visible at 200 feet on a level, straight highway.

The proposed ordinance currently requires vehicles to 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 sides of the vehicle. These beacons shall be activated whenever merchandise is being sold, offered for sale, or displayed for sale."
- "an operable swing-arm attached to its left side. This swing-arm shall be of a type, size, and description approved by the City, and shall be activated whenever the vehicle stops to sell, offer to sell, or display merchandise on a public street."

The City Council may wish to consider whether adding signs or decals to the front and rear of ice cream vending vehicles would enhance vehicle safety requirements in the proposed ordinance. If the Council chooses to do so, staff has included the proposal in the Options and Motions sections of this memorandum.

II. All ice cream vendors or companies should be required to submit a copy of their Utah sales tax permit when they apply for a business license and a copy of certificates authorizing them to do business in the State of Utah.

City Code 5.02.060 titled *Business License: Application Requirements* reads in part that an application: "... may also show ... that the applicant will otherwise be in full compliance with all applicable City, State and Federal laws and ordinances." The City's business license application form also contains a line titled "State Sales Tax Identification Number."

Item C-2

III. Paragraph F of Section 5.64.600 should be deleted. The paragraph requires applicants for an ice cream vending truck driver's license to provide, "The names and addresses of three (3) residents of the City who have known the prospective applicant for a period of thirty (30) days and who will vouch for the sobriety, honesty, and general good character of the applicant."

The Association letter contends that the paragraph is unnecessary because the proposed ordinance also requires a check of an applicant's driving record and any criminal record an applicant may have. The Association letter also contends that checking three references is an unneeded use of City time and money and could delay the time an ice cream vending truck driver could earn money at a largely seasonal job.

It has been noted previously that the driver's application requirements are almost identical to application requirements for taxicab drivers. Besides taxicab drivers, auctioneers and the drivers of vehicles transporting disabled people appear to be the only two other occupations in which character references are required in the *City Code*. On the other hand, some Council Members and residents have expressed concern about the character of ice cream vending truck drivers.

The City Council may wish to consider deleting the requirement for references. If the Council chooses to do so, staff has included the proposal in the Options and Motions sections of this memorandum.

IV. The Association letter proposes to change the words "thirty (30) days" in Paragraph 1 of Section 5.64.660 to "five (5) working days." The letter contends that 30 days is too long to be notified of an approval or denial of a license, particularly for a seasonal business.

According to the Business Licensing Office, the 30-day requirement is a standard goal for business license applications. As mentioned in the *Issues/Potential Questions* section of this memorandum, the 30-day requirement comports with Salt Lake City Ordinance No. 8 of 2003 that the City Council adopted March 11. The ordinance provides that "business licenses be approved or denied within 30 days of submission to the city. If the process requires more than 30 days, a conditional license, conditioned upon completion of the review verifying the applicant meets all license requirements, will be issued."

It should be noted that the 30-day standard may not reflect the actual time it takes to review, approve and notify applicants. Some business license applications have been approved in three or four days, depending on the nature of the business. Generally, when someone files a business license application the approval of the application requires review by four or five City divisions or departments. Approval by the Licensing Office depends on how fast other divisions or departments review, comment, and either approve or deny an application. Even so, codifying a five-day review and notification process may be too short a time.

The City Council may wish to consider changing the language in Section 5.64.660 to "five (5) working days." If the Council chooses to do so, staff has included the proposal in the Options and Motions sections of this memorandum.

V. The letter also suggests that ice cream vending trucks could satisfactorily address noise issues by using either chimes that would be required to sound below a certain decibel level or by using a "simple old-fashioned bell." According to the Administration, the Salt Lake Valley Health Department has indicated that chimes on a vehicle would have to comply with the

Item C-2

proposed ordinance's Section 5.64.720 Paragraph C which requires that sound from an ice cream vending truck must be played "In such a manner that such sound is plainly audible 50 feet from such vehicle." A bell probably would have to meet the same requirement.

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 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:

Item C-2

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.
- A requirement that the vehicle be completely stopped and parked before selling or displaying wares.

Item C-2

- 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.
- 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.

Item C-2

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

Item C-2

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.