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## M E M O R A N D U M

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**DATE:** March 5, 2004  
**TO:** City Council Members  
**FROM:** Russell Weeks  
**RE:** Briefing: Proposed Amendment to Ordinances Regulating Free Speech  
**CC:** Cindy Gust-Jenson, Rocky Fluhart, Ed Rutan, Sam Guevara, Boyd Ferguson, Gary Mumford

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This memorandum pertains to a City Attorney's Office briefing about proposed amendments to *City Code* Section 11.12.020 titled *Disturbing the Peace*. The Attorney's Office prepared the proposed amendments after reviewing eight existing ordinances to determine their comportment with the U.S. *Constitution's* First Amendment. The Attorney's Office is scheduled to brief the City Council on March 9. Council staff also has attached copies of *Salt Lake City Guidelines Regarding Free Speech* that the Administration released on February 6.

### **POTENTIAL OPTIONS**

Council staff will prepare potential options for the City Council to consider after the March 9 briefing. However, it should be noted that the Administration's transmittal letter says, "The City Council may wish to discuss certain aspects of the proposed amendment with the City Attorney's Office in Executive Session under the attorney-client privilege."

### **POTENTIAL MOTIONS**

Council staff will prepare potential motions for the City Council to consider after the March 9 briefing.

### **KEY POINTS**

According to the transmittal letter, Mayor Ross C. Anderson requested that the City Attorney's Office review the City's ordinances regulating the exercise of free speech under the *Constitution's* First Amendment to determine whether the ordinances are "up to date" constitutionally and whether they provide City police officers with the authority "to respond to particular situations as they arise."

According to the transmittal letter, the City Attorney's Office concluded that the ordinances regulating free speech are "constitutionally up to date" and provide police officers with sufficient authority to respond to situations.

However, the City Attorney's Office believes it is advisable to fine-tune Section 11.12.20 "to expressly confirm the reach of the ordinance to specific situations."

## **BACKGROUND/DISCUSSION**

The City Attorney's Office reviewed eight ordinances that pertain to public order in the context of First Amendment rights. As noted above, the Attorney's Office prepared a proposed ordinance to "fine-tune" Section 11.12.20 titled *Disturbing the Peace*.

The full text of the current ordinance reads:

- A. A person is guilty of disturbing the peace if such person:
  - 1. Refuses to comply with the lawful order of the police to move from a public place;
  - 2. Knowingly creates a hazardous condition;
  - 3. Intending to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
    - a. Engages in fighting, violent, tumultuous or threatening behavior,
    - b. Uses words that are intended to cause acts of violence by the person to whom the words are addressed,
    - c. Makes unreasonable noises in a private place which can be heard in a public place,
    - d. Maliciously or willfully disturbs the peace or quiet of another or of any public place by making an unreasonably loud noise or by discharging firearms, or
    - e. Obstructs vehicular or pedestrian traffic, except as allowed pursuant to the provisions of chapter 3.50 of this code.
- B. "Public place", for the purpose of this section, means any place to which the public or a substantial group of the public has access, and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.
- C. Disturbing the peace is a class C misdemeanor if the offense continues after a request by a person to desist. Otherwise it is an infraction.

One of the proposed amendments would add language (additions are in italics) to Subsection A.3.b so that it would read: "Uses words *and/or does or makes any unreasonable act, gesture, or display* that are intended to cause acts of violence *or are inherently likely to cause a violent reaction* by the person to whom the words *or the act, gesture, or display* are addressed *and that under the circumstances, create a clear and present danger of a breach of the peace or imminent threat of violence.*"

According to the transmittal letter, the proposed amendment "makes it clear that conduct as well as or in conjunction with words can constitute 'fighting words' which may be prosecuted for disturbing the peace."

The second proposed amendment appears to be a minor housekeeping amendment to change Subsection A.3.c. The current Subsection reads: "Makes unreasonable noises in a private place which can be heard in a public place." The proposed amendment reads: "Makes *unreasonably loud noises* in a private place *that* can be heard in a public place."

According to the transmittal letter, some “concerns have been raised about excessive noise from demonstrators on public sidewalks interfering with the quiet of people on private property.” According to the letter, the Attorney’s Office believes “that the current Section 11.12.020.A.3.d appropriately addresses such situations.” The cited subsection reads: “Maliciously or willfully disturbs the peace or quiet of another or of any public place by making an unreasonably loud noise or by discharging firearms.”

### **OTHER ORDINANCES**

The following is a list, accompanied by brief synopses, of the seven other ordinances the Attorney’s Office reviewed.

**11.08.060 – Definition – Crime of Stalking:** A person is guilty of stalking who repeatedly follows or harasses another person or repeatedly follows a course of conduct against that person with the intent of placing that person in reasonable fear of bodily injury, harm to that person's family members, or damage to property of that person or another.

**11.12.010 – Riot:** A person is guilty of riot if: 1. Simultaneously with two (2) or more other persons, such person engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or 2. Such person assembles with two (2) or more other persons with the purpose of engaging, soon thereafter, in tumultuous or violent conduct, knowing that two (2) or more other persons in the assembly have the same purpose. ...

**11.12.030 – Disrupting a Meeting or Procession:** A person is guilty of disrupting a meeting or procession if, intending to prevent or disrupt a lawful meeting, procession or gathering, he/she obstructs or interferes with the meeting, procession or gathering by physical action, verbal utterance, or any other means under circumstances which could cause a breach of the peace.

**11.32.010 – Offenses Constituting a Public Nuisance:** A "public nuisance" is a crime against the order and economy of the city, and consists in unlawfully doing any act or omitting to perform any duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of another person or persons; or
2. Offends public decency; or
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, stream, canal or basin, or any public park, square, street or highway; or
4. In any way renders another person or persons insecure in life or the use of property.

**12.76.090 – Pedestrians Obstructing Sidewalks Prohibited:** Pedestrians shall not obstruct or prevent the free use of sidewalks or crosswalks by other pedestrians.

**14.20.100 – Loitering on Sidewalk:** It is unlawful for any person to remain standing, lying or sitting on any sidewalk for a longer period than two (2) minutes, in such manner as to obstruct the free passage of pedestrians thereon, or willfully to remain standing, lying or sitting thereon in said manner for more than one minute after being requested to move by any police officer, or willfully to remain on any sidewalk in such manner as to obstruct the free passage of

any person or vehicle into or out of any property abutting upon said sidewalk or any property having access to such sidewalk.

**14.28.050 – Standing, Lying or Sitting on Streets or Highways:** It is unlawful for any person to remain standing, lying or sitting on any street or highway in a manner which obstructs the free passage of vehicular or pedestrian traffic thereon, or which creates a hazard to any person, or to willfully remain on such street or highway in a manner which obstructs the free passage of any person or vehicle into or out of any property abutting upon such street or highway, or any property having access to such street or highway.