


SEP 30 2004

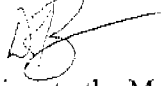
ROSS C. "ROCKY" ANDERSON
MAYOR

SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

COUNCIL TRANSMITTAL

TO: Rocky J. Fluhart 
Chief Administrative Officer **DATE:** September 27, 2004

FROM: D.J. Baxter 
Senior Advisor to the Mayor

SUBJECT: Ordinance to Establish a Railroad Quiet Zone on the 900 South Line

ACTION ITEMS: Schedule briefing and vote before the City Council to enact a new section of the Salt Lake City Code establishing a railroad "quiet zone" along the 900 South Union Pacific rail line.

DISCUSSION:

In September 2003, the Salt Lake City Council appropriated approximately \$700,000 to finance the construction of improvements along the 900 South rail line, from 700 West to Redwood Road, for the purpose of creating a railroad quiet zone. Those improvements have now been completed, and the Utah Department of Transportation (UDOT) has inspected and approved the changes.

Ultimately, the routine sounding of locomotive horns at rail/street crossings will be governed by the Federal Railroad Administration (FRA). Because the FRA has not yet finalized its rule, however, we have made arrangements with UDOT to operate the 900 South quiet zone under state law until the new FRA rule takes effect. The process UDOT has prescribed for designating 900 South as a quiet zone is as follows:

1. Salt Lake City must adopt the attached ordinance (drafted and approved by UDOT);
2. Salt Lake City must conduct a 1-week public education campaign to alert the public to the change in railroad operations and emphasize the need for additional caution when crossing the tracks in a quiet zone; and
3. Salt Lake City must send written notification to Union Pacific to cease the routine sounding of whistles in the designated area along the 900 South line.

The attached ordinance contains eight primary sections, three of which contain the substantive provisions.

451 SOUTH STATE STREET, ROOM 406, SALT LAKE CITY, UTAH 84111

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RECYCLED PAPER

Section 2: "Ban on Warning Devices" outlines the rules under which trains must operate once the quiet zone becomes effective. Trains will no longer be permitted to sound the train whistle as a matter of routine as they approach grade crossings, but will be permitted to sound the whistle in a variety of circumstances, such as emergencies where there is an imminent threat of injury, death, or property damage, or to alert crews working in the right-of-way. It is important to note that this ordinance, and the FRA's final rule, will permit the city to restrict the routine sounding of train horns, but not other, less obtrusive audible warning devices. Union Pacific has informed us that trains will still sound a bell mounted on the locomotive as they approach the crossings, and the bells attached to gates at the crossings will also continue to sound. The FRA assured us that bells are used in several existing quiet zones, and they have never received complaints from nearby residents about the sounding of the bells.

Section 3 – "Salt Lake City Undertakings" prescribes Salt Lake City's responsibilities for the establishment and operation of the quiet zone. The city will be required to conduct a public education campaign, maintain crossing guards at Emery and Navajo Streets (which we do now), and maintain all street improvements and signage associated with the quiet zone.

Section 3 (h) requires Salt Lake City to indemnify UDOT against any legal claims arising from the operation of the quiet zone. The City Attorney's Office has opined that the City's exposure under this provision is minimal. The opinion is attached.

Section 4 states that UDOT must approve the ordinance. UDOT staff and attorneys have already reviewed the ordinance, and have indicated their willingness to approve it in its current form.

CONCLUSION:

Many residents of Poplar Grove and Glendale have suffered from the routine sounding of train whistles at all hours for 2 ½ years. After much work with the Federal Railroad Administration, Union Pacific, and the Utah Department of Transportation, we are pleased to have reached a time and position where we can end the routine sounding of whistles on the 900 South rail line. The Administration is very grateful to the City Council and council staff for their ongoing support and assistance on this project. To initiate the final steps toward activating the 900 South quiet zone, we request the Council review and adopt the attached ordinance.

ATTACHMENTS: (1) Proposed Ordinance Implementing the 900 South Quiet Zone
 (2) Legal Opinion regarding indemnification provisions

CONTACT PERSON: D.J. Baxter, 535-7735

SALT LAKE CITY ORDINANCE
No. _____ of 2004
(900 South Quiet Zone)

AN ORDINANCE PROHIBITING THE SOUNDING OF TRAIN WARNING DEVICES ALONG THE 900 SOUTH RAIL LINE BETWEEN 700 WEST STREET AND REDWOOD ROAD, INCLUSIVE; TEMPORARILY SUPERSEDING THE EFFECTIVENESS OF SECTION 14.44.095 OF THE SALT LAKE CITY CODE; ESTABLISHING AN EFFECTIVE DATE AND A TERMINATION DATE; AND RELATED MATTERS.

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WHEREAS, on December 18, 2003, the Federal Railroad Administration (the "FRA"), issued its Interim Final Rule (the "Rule"), relating to the sounding of warning devices at railroad/street crossings, which Rule is proposed to become effective December 18, 2004; and

WHEREAS, pursuant to the Rule, communities which have implemented supplemental safety measures meeting FRA standards ("SSMs"), may, after the effective date of the Rule, establish and designate quiet zones; and

WHEREAS, Salt Lake City desires to establish a quiet zone under the Rule on the rail line that parallels 900 South Street at approximately 950 South, effective for all rail/street crossings between 700 West Street and Redwood Road, inclusive, and has implemented SSMs at such crossings in anticipation of establishing such quiet zone under the Rule; and

WHEREAS, Section 56-1-14, Utah Code Annotated (the "Act"), provides that all locomotives shall sound bells, whistles or sirens within certain distances of each railroad track/street crossing; and

WHEREAS, the Act further provides that local jurisdictions may, by ordinance approved by the Utah Department of Transportation ("UDOT"), provide more restricted sounding of bells, whistles or sirens, or may provide for the elimination of the sounding of such bells, whistles or sirens, except in case of emergency; and

WHEREAS, pending the effective date of the Rule, Salt Lake City desires to restrict the sounding of warning devices within the Quiet Zone, under authority of the Act; and

WHEREAS, Salt Lake City has obtained UDOT's preliminary approval of this ordinance,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SALT LAKE CITY, UTAH, AS FOLLOWS:

SECTION 1. DEFINITIONS. The following terms shall have the following meanings when used in this Ordinance:

900 South Quiet Zone means the rail corridor and all rail/street crossings on the rail line which parallels 900 South State Street at approximately 950 South, between 700 West Street and Redwood Road, inclusive, which crossings are identified by the following US DOT Crossing Inventory numbers:

DOT 254946G, 700 West
DOT 805825H, 800 West
DOT 805826P, 900 West
DOT 806756F, 1100 West
DOT 806754S, Navajo Street

DOT 806755Y, Emery Street
DOT 806753K, Redwood Road

Effective Date means date on which warning devices shall cease to be used, pursuant to this Ordinance.

UDOT means the Utah Department of Transportation.

FRA means the Federal Railroad Administration.

SECTION 2. BAN ON WARNING DEVICES, 900 SOUTH QUIET ZONE.

No operator of a railroad locomotive or any other railroad vehicle shall cause or permit the routine sounding of locomotive horns on the approaches to and at the rail/street crossings within the 900 South Quiet Zone. Nothing in this Ordinance shall prohibit an engineer from sounding the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage. This Ordinance does not require that such warnings be provided nor does it impose a legal duty to sound the locomotive horn in such situations. Nothing in this Ordinance excuses compliance with FRA rules in sections 214.339, 234.105, 234.106, and 234.107 of title 49, Code of Federal Regulations, concerning use of the locomotive horn under circumstances therein described. Nothing in this Ordinance restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (*e.g.*, to announce the approach of the train to roadway workers in accordance with a program adopted under FRA Rules at 49 CFR 214 or where required for other similar purposes under the operating rules of the locomotive operator.)

SECTION 3. SALT LAKE CITY UNDERTAKINGS.

(a) Salt Lake City shall cause to be conducted a public information campaign for the purpose of educating the public regarding the proposed whistle, horn and siren restrictions, and the Effective Date. Such campaign shall last not less than seven (7) consecutive days, and shall be completed not more than thirty (30) days prior to the Effective Date.

(b) The City shall maintain school-crossing guards at the crossings located on Emery and Navajo Streets. Times that Guards shall be provided will be in accordance with Utah Administrative Rule R920-5 (Manual and Specifications on School Crossing Zones, Supplemental to Part VII of the Manual on Uniform Traffic Control Devices.)

(c) All warning devices installed at a crossing shall operate properly and in accordance with the provisions of FRA Grade Crossing Signal System Safety Rules at 49 CFR 234. In the event of a warning system malfunction as defined in 49 CFR 234.5, an engineer operating a train through the crossing is not responsible for sounding the locomotive horn until he or she has been informed or knows of the warning system malfunction.

(d) Advance warning signs, as approved by UDOT and in conformance with the Manual on Uniform Traffic Control Devices issued by the Federal Highway Administration, shall be posted and maintained by the City advising motorists that locomotive warning devices will not be sounded.

(e) Maintenance of the raised medians and quiet zone related signs located on SR-68 (Redwood Road) is the responsibility of the City.

(f) The City shall maintain, at its expense, and in accordance with FRA

standards, all signage and street improvements within the Quiet Zone required as SSMS, pursuant to the terms of the Agreement Re: 900 South, dated March 24, 2003, between the City and Union Pacific Railroad Company (the "Company").

(g) The City shall cause the Company to maintain, at the Company's expense, and in accordance with FRA standards, all crossing signals and crossing gates within the Quiet Zone and required as supplemental safety measures, pursuant to the terms of the Agreement Re: 900 South, dated March 24, 2003, between the City and the Company.

(h) Salt Lake City shall hold harmless and indemnify and defend UDOT from and against all legal claims and liability arising from the implementation or continuance of the 900 South Quiet Zone, except for claims and liability arising out of acts or omissions on the part of UDOT in connection with matters for which UDOT has a legal responsibility.

(i) Upon the later to occur of (i) approval by UDOT of this Ordinance, or (ii) completion of supplemental safety measures meeting the requirements of the Rule, in accordance with 49 CFR 222 and 49 CFR 229, Salt Lake City shall give written notice to the Company and UDOT of this Ordinance, and the Effective Date of the prohibition against sounding warning devices effected hereby.

SECTION 4. UDOT APPROVAL.

This Ordinance is subject to the approval of UDOT, pursuant to the Act. Upon receipt of this ordinance, UDOT shall issue an Order to the Company notifying them of the implementation of the Quiet Zone on the effective date. Such approval may be revoked by UDOT in the event Salt Lake City fails to perform one or more of its obligations hereunder, and such failure continues for a period of thirty (30) days

following written notice of such failure from UDOT to Salt Lake City. Upon revocation by UDOT of its approval as provided herein, this Ordinance shall cease to be effective. In cases of imminent danger to the public, UDOT may immediately and temporarily suspend this Ordinance by notifying the Company and Salt Lake City in writing of the need for the suspension, and enumerating corrective measures that must be taken for the suspension to be lifted. UDOT shall immediately lift such a suspension by written notice to the Company and Salt Lake City as soon as the enumerated corrective measures are completed.

SECTION 5. Should any provision of this Ordinance be declared illegal by a court of competent jurisdiction, Salt Lake City shall work with UDOT to develop an acceptable provision that still carries out the purpose and need of the original provision, if possible. Also, a declaration that any provision of this ordinance is illegal shall not work to make any other provision, or the entire agreement, illegal.

SECTION 6. Inasmuch as the Rule will preempt the Act when the Rule becomes final, this Ordinance shall be effective until final Rule goes into full force and effect, and shall be deemed terminated and of no effect thereafter. Beginning at 12:00 a.m. on the effective date of the final Rule, the sounding of warning devices within the 900 South Quiet Zone shall be governed by such final Rule and any ordinance, policies or procedured adopted by Salt Lake City pursuant thereto.

SECTION 7. EFFECTIVENESS OF SECTION 14.44.095 OF THE SALT LAKE CITY CODE. Section 14.44.095 of the Salt Lake City Code shall be deemed superseded by this Ordinance as long as this Ordinance is effective.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall take effect at 12:00 a.m. on the fifteenth day following the day on which notice is mailed to the Company and to UDOT pursuant to Section 3(i) hereof.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2004.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to the Mayor on _____
Mayor's Action: ☐ Approved ☐ Vetoed

MAYOR

ATTEST:

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2004

Published: _____

APPROVED AS TO FORM
Salt Lake City Recorder's Office
Date 9/30/04
BY CEB/WM

SALT LAKE CITY CORPORATION

LAW DEPARTMENT

MORRIS D. HAGGERTY
SENIOR CITY ATTORNEY

ROSS C. ANDERSON
MAYOR
EDWIN P. RUTAN, II
CITY ATTORNEY

To: D.J. Baxter
From: Morris Haggerty, Senior City Attorney
Date: September 27, 2004
Re: Legal opinion

You have requested my legal opinion on whether adoption of the quiet zone ordinance with its provision indemnifying and defending UDOT from claims and liability arising from the implementation of quiet zones would result in potential liability. My conclusion is that the risk is minimal and should not prevent the ordinance from being adopted.

I have checked the case law in Utah regarding suits against UDOT for accidents at railroad crossings. The most common type of suit involves an allegation that UDOT failed to upgrade the warning devices at a crossing. (These are typically unsuccessful because of the discretionary function exception.) Of course, such a claim would not be made if the quiet zone is implemented, the crossings are being upgraded as far as possible. The only type of claim that I can conceive of that might be brought against UDOT that Salt Lake City Corporation would have to defend and indemnify if the ordinance is adopted is one where the injured person claims that while the warning devices failed to prevent an accident a train whistle would have. Presumably the person would sue UDOT for allowing Salt Lake City to implement the quiet zone. In such a case, Salt Lake City would probably be sued under the same theory for the same damages because it made the initial decision to implement the quiet zone. Defending and indemnifying UDOT in such a case would not increase liability or damages because if UDOT is liable, Salt Lake City is probably primarily liable. Thus, defending and indemnifying UDOT adds very little additional cost or risk to such a case. In addition, UDOT probably has some very good defenses, as would Salt Lake City, which we could assert such as the discretionary function exception, the fact that the crossing is safer with upgraded warning devices and no whistle versus a whistle, etc.

If I can provide further information please let me know.