

SCOTTSDALE TRANSPORTATION COMMISSION REPORT



To: Transportation Commission
From: Walt Brodzinski, Right of Way Manager
Meeting Date: March 15, 2012

ITEM IN BRIEF

Action:

Information and possible action

Purpose:

To discuss the proposed Neighborhood Street Vendor Ordinance and request Transportation Commission input on any concerns relative to citywide transportation safety and/or community mobility.

Key Considerations:

Neighborhood street vending, with the exception of newspapers, was prohibited from Scottsdale streets in the 1970s. Forty years later, some street vending is reported to occur with some inconsistency in enforcement. The City also receives requests from vendors to reconsider the existing prohibitions. The majority of these requests are made to the City's Tax & License staff and/or to the Mayor and City Council.

The proposed ordinance would focus on:

- Hours of operation
- Length of time at one location
- Licensing requirements
- Place of operation
 - Residential streets only
 - Not allowed downtown
 - Not near parks/schools

Attachments:

- PowerPoint presentation.
- Existing Ordinance 16-352
- Proposed ordinance Draft

Neighborhood Street Vendor Ordinance

Introduction of Draft Ordinance

Transportation Commission
March 15, 2012



Neighborhood Street Vendor Ordinance

- History
- Present Day
- Current Efforts
- Ordinance Draft



Neighborhood Street Vendor Ordinance

History-

- Banned during the late 70's
- Illegal activity by vendors
- Existing Ordinance 16-352
 - Essentially bans all sales in the street except newspapers.

Neighborhood Street Vendor Ordinance

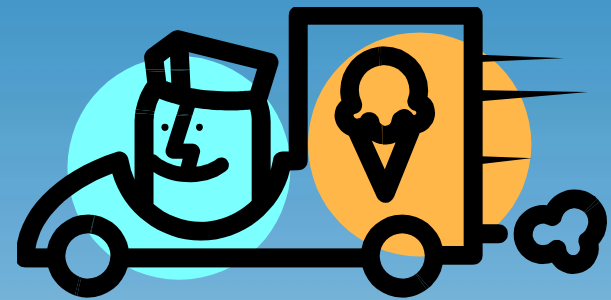
Present day-

- Some street vending does occur
- Inconsistent enforcement
- Requests to do street vending

Neighborhood Street Vendor Ordinance

Current Efforts-

- Staff discussions
 - Transportation
 - Tax and License
 - Mayor's Office
 - City Attorney's Office
- Ordinance Draft



Neighborhood Street Vendor Ordinance

- Draft ordinance highlights -
 - ✓ Hours of operation
 - ✓ Length of time at one location
 - ✓ Must be licensed
 - ✓ Residential streets only
 - ✓ Not allowed downtown
 - ✓ Not near parks/schools

Neighborhood Street Vendor Ordinance

Questions???

Walt Brodzinski – Transportation – 480-312-7757

Jack Shafer – Assistant City Attorney – 480-312-7302



Sec. 16-352. - Street sales.

No person, except as otherwise provided in section 16-354 and except any person who sells goods, wares or merchandise on adjacent private property who conducts a sidewalk sale for not more than five (5) days duration and not more frequently than twice in a single calendar year, shall on any street offer for sale, solicit the sale of, announce by any means the availability of, or have in his possession, control or custody, whether upon his person or upon some other animate or inanimate object, any goods, wares or merchandise which the public may purchase at any time.

(Code 1972, § 13-402)



City Attorney's Office

3939 N. Drinkwater Blvd
Scottsdale, AZ 85251

PHONE 480-312-2405
FAX 480-312-2548

MEMORANDUM

TO: Chairman Weiss and Members of the Transportation Commission

FROM: Jack Shafer, Assistant City Attorney

CC: J.P. Twist, Dave Meinhart

RE: Draft Neighborhood Street Vendor Ordinance

DATE: March 8, 2012

This cover memorandum accompanies the "Draft Neighborhood Street Vendor Ordinance" materials submitted in conjunction with the March 15, 2012 Transportation Commission meeting.

As of today's date, it does not appear I will be able to attend both the Transportation Commission meeting and Special City Council meeting on March 15. However, Mr. Twist, Mr. Meinhart and I are comfortable that this presentation can proceed without my attendance. Additionally, I do not foresee any imminent legal questions arising in your discussion that are not addressed and/or covered by the draft ordinance.

As you will note, the Draft Neighborhood Street Vendor Ordinance does not yet contain standard licensing provision language that is relatively uniform throughout City's regulatory license ordinances, such as: information to be supplied with an application, requirement to update license, the denial/revocation authority of the Customer Service Director, and related appeal rights of applicant or licensee. Additionally, this draft does not yet contain all timing requirements for City's Tax and License Office to complete certain licensing acts pursuant to SB 1598 (2011). All necessary provisions will be completed prior to formal presentation to the City Council. For a recent example of SB 1598 compliance, please see Ord. 3996 (approved 1/24/12).

It is currently undetermined where this new ordinance will be placed in the Scottsdale Revised Code (hopefully in Chapter 16) and hence generic numbering is used at this point. Also, a formal ordinance number has not been requested from the City Clerk's Office yet.

Notwithstanding the foregoing, and based on discussions with staff, all provisions deemed pertinent to the Transportation Commission's evaluation of this new use of City streets are in their proposed final form and proper for discussion at this time.

DRAFT- FOR DISCUSSION PURPOSES ONLY

NEIGHBORHOOD STREET VENDOR ORDINANCE

Caveats:

This Draft ordinance does not yet contain standard licensing provision language that is relatively uniform throughout City's regulatory license ordinances, such as information to be supplied with an application, requirement to update license, the denial/revocation authority of the Customer Service Director, and related appeal rights of applicant or licensee. Additionally, this draft does not yet contain all timing requirements for City's Tax and License Office to complete certain licensing acts as established in Arizona SB 1598 (2011). All necessary provisions will be completed by the City Attorney's Office prior to presentation to the City Council. For a recent example of SB 1598 compliance language, please see Ord. 3966 (approved 1/24/2012).

Special Requirements-Food Sales

Food vendors must have a Maricopa County Food Handlers Permit. Equipment must be inspected and approved by the Maricopa County Health Department.

Sec. 1-1. Definitions

For purposes of this Chapter, the following definitions apply:

Child: shall mean an individual who has not obtained the age of sixteen years.

Food: shall mean any items intended to be sold for human consumption, the sale of which is not prohibited by law, nor which requires the consumer being of a certain age. Only food items that require no on-site preparation to sell in their ordered state are permitted.

Motorized Vehicle: shall mean a vehicle powered by an internal combustion engine or other non-human motivation that is designed to be easily used and maneuvered within the widths of non-divided residential neighborhood streets.

On-Site Preparation: shall mean the application of heat, through a stove, boiling water, microwave oven, or any other manner, that is necessary to serve food in its ordered form.

Person: shall mean a corporation, limited liability company, firm, partnership, association, organization, or any group acting as a unit, as well as an individual.

Residential Neighborhood: shall mean those areas within the City, and outside the Downtown boundary, consisting primarily of houses and other dwelling places whose property boundaries are accessed using streets that are both non-divided (non-striped) and not posted for speeds greater than 25 MPH. Houses and other dwelling places that lay along any divided streets or streets posted for speeds greater than 25 MPH are not included in this definition.

Sidewalk: shall mean that portion of the public right-of-way between the curblin of a street and the adjacent property line, or, if there is no curblin, the “sidewalk” shall mean that portion of the public right-of-way between the lateral boundary line of the pavement of a street and the adjacent property line, or, if there is no pavement, then “sidewalk” shall mean that portion of the public right-of-way between the lateral boundary line of the demarcated unsurfaced street and the adjacent property line.

Street: shall mean any public right-of-way, such as a road, highway, avenue, boulevard, alley or lane, which is designed primarily to accommodate motorized vehicle travel within the City. It expressly does not include any sidewalk.

Street Vending: shall mean peddling, vending, selling, displaying, or offering for sale any food item or item of tangible personal property from a motorized vehicle that occurs between the curblines, or, if none, then that portion of the right-of-way between the lateral boundary lines of the demarcated unsurfaced street.

Street Vendor: shall mean any person engaged in street vending, including such person’s employees, contractors, or agents-however designated.

Sec. 1-2. Other Right-of-Way Sales Restrictions Not Effected

The prohibition on selling any object in the public right-of-way contained in Section 16-352 remains in full force and effect except as expressly established by this Chapter.

It is expressly established that “Street Vending”, as defined in Sec. 1.1, shall be permitted, solely on Residential Neighborhood streets, and solely in conformity with all requirements contained herein; Street Vending of any food item that requires on-site preparation is not permitted.

Sec. 1-3. Street Vending-License Required; License display

All Street Vendors must obtain a license under this Chapter. No license shall issue until the City concludes requisite background check(s) and receives payment of appropriate fees. It is unlawful to conduct any Street Vending without the City’s License.

The Street Vendor must display its license at any time it is conducting Street Vending activity. Failure to display the City’s License is unlawful.

Obtaining a license to conduct Street Vendor activity does not obviate the independent legal requirement to obtain a Privilege Tax License and report revenue thereunder.

Sec. 1-4. Time, Duration and Location Restrictions for Street Vendor Activities

Time: No Street Vendor may conduct sales within the City before sunrise or after sunset.

Duration: No Street Vendor may conduct sales at any single street location for more than one hour. Notwithstanding the foregoing, a Street Vendor may remain at the location after sales have concluded in order to safely shut down its operations; such time shall not be included in City’s calculation of the one hour limit.

Single Location: Any sales activity conducted at a location within 1320' of any other location used in that same day shall constitute one single location, and the one hour limit shall apply.

School zone restrictions: no Street Vending shall be allowed within 600' of school property between 7:30AM-4:30PM. School governing boards may make arrangements to provide vending locations on campus.

Park vending restrictions: Street Vending is prohibited on streets abutting parks to the extent vending occurs within 150' of duly authorized park concessions boundaries.

Traffic restrictions: No Street Vendor vehicle, or any extension thereof-such as mirrors, shall obstruct the movement of pedestrians or other vehicles using the street or sidewalk in a Residential Neighborhood. A Street Vendor will not be deemed to be restricting traffic if it pulls over as far as practicable to the right hand side of the street and sufficient space exists for motor vehicle traffic to pass the Street Vendor in a single file line. No motor vehicle shall roll up onto the sidewalk of any street bounded by rolled curbs or otherwise block pedestrian sidewalk access.

Repeat use, vendor density requirement: A Street Vendor shall rotate its locations during the week such that it does not operate in any of the same locations in a 48 hour period. In order to provide adequate access for pedestrians and other traffic in the street, no more than two vendors may operate within 1320' of each other.

Non-exclusivity: The granting of a license does not convey any rights to conduct business at any particular location or at any particular time.

Sec. 1-5. License application; timelines; special requirements; disqualification

All persons desiring a license to operate as a Street Vendor shall file an application, prepared by the Tax and Licensing Office and containing all information determined necessary by the Customer Service Director, along with the necessary fee with the Tax and Licensing Office.

Administrative Time Frame: Within fifteen (15) days after receiving a license application under this article, the director will determine whether the application is administratively complete, and notify the applicant as set forth in Article I.

Substantive Review Time Frame: Within forty-five (45) days after the notice of administrative completion, the city will complete its substantive review of the license application in conformance with state law.

Overall Time Frame: Within ninety (90) days, subject to any extensions in conformance with state law, after receiving an application pursuant to this article, the director will grant or deny a license.

The time frames provided in this section are suspended if an application has been determined to be administratively incomplete or a supplemental request has been made during the substantive review period until the applicant corrects any deficiencies or responds to a supplemental request for information

IN ADDITION TO STANDARD LICENSING PROCEDURES AND REQUIREMENTS AS CONTAINED IN OTHER LICENSE ORDINANCES

All persons desiring a license to operate as a Street Vendor shall have their photograph and fingerprints taken by Tax and Licensing staff. Additionally, the applicant shall have all employees, contractors or agents who will be conducting activity in Residential Neighborhoods submit to identifying photography and fingerprint background checks as part of the application.

All persons desiring a license to operate as a Street Vendor must have reached the age of sixteen (16) prior to any license issuing.

All persons desiring a license to operate as a Street Vendor must provide three (3) character references in support of their application.

All persons desiring a license to operate as a Street Vendor shall demonstrate that they have obtained general commercial liability insurance in the amount of \$1,000,000 along with vehicle liability insurance in the amount of \$500,000. These requirements may be reduced at the discretion of the Customer Service Director.

There shall be a total disqualification from licensure if the applicant has ever been convicted for any type of sex offense against children/violence against children or distribution of drugs.

City shall deny licensure for recent civil traffic offenses unless individual is eligible for and completes traffic school.

Sec. 1-6. Fees.

Applicant shall pay an annual application fee of \$ TBD [not to exceed the City's highest rate for any similar regulatory license] plus City's direct costs of fingerprinting and photo identification. A renewal fee of \$TBD is also imposed.

Sec. 1-7. License issued; renewal

This License is good for a one year period from the date issued. The failure to file an application for renewal sixty (60) days in advance of expiration will result in a late filing penalty of \$60 being imposed.

No Street Vendor License-original or renewal-shall issue if any employee, contractor, or agent of Licensee who will be engaged in activity in Residential Neighborhoods could not otherwise qualify for a license in their own right. All new employees, contractors, or

agents must submit to fingerprinting and background checks and obtain City issued photo identification.

Sec. 1-8. License Denial, Revocation, Suspension, Appeal.

Similar to existing regulatory Codes.

Sec. 1-9. Special Rules Applicable to Street Vending Operations.

It shall be unlawful for Street Vendors to operate if not in compliance with the following:

- (A) Appropriately sized (TBD) “Watch For Children” signage displayed.
- (B) Dual Wide angle mirrors properly adjusted
- (C) City’s Neighborhood Street Vendor License number displayed on vehicle.
- (D) City License enforcement phone number displayed on vehicle.
- (E) Hazard lights must be on when vehicle is stopped and conducting sales.
- (F) Street Vendor provides City with phone number at which driver can be contacted at all times.

In addition to complying with applicable motor vehicle laws, motorized vehicles must be in good mechanical working order and all lights and signal devices must be operating properly.

Sec. 1-10. Music and Noise restrictions

Street Vendor operations are subject to the City’s noise ordinance. Yelling, shouting, hawking, or similar vocalizations are not allowed at any time. Loudspeakers, drums, sirens, and other attention getting devices are not allowed.

The above restrictions do not apply to pleasing melodies played in Residential Neighborhoods by motorized vehicles only while such vehicles are in motion.