BILL NO. 2010-41

ORDINANCE NO. _____

AN ORDINANCE TO UPDATE THE CITY'S LICENSING REGULATIONS GOVERNING ICE CREAM TRUCKS, INCLUDING REVISED PROVISIONS CONCERNING HOURS OF OPERATION AND SIGNAGE, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilwoman Lois Tarkanian

Summary: Updates the City's licensing regulations governing ice cream trucks, including revised provisions concerning hours of operation and signage.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title 6, Chapter 47, Section 10, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.010: As used in this Chapter, the following terms shall be defined as set forth in this Section:

[(A) "Employee" means a person who works for or under the direction of, on behalf of, or as an agent of a licensee.

(B) "Health District" means the Clark County Health District.]

"Authorized vending period" means as follows:

(1) Within a City park, or upon or adjacent to public school grounds where organized athletic events take place:

(a) From nine a.m. to nine p.m., between June 1 and August 31; and

(b) From nine a.m. to eight p.m., otherwise;

(2) In any residential neighborhood where the provisions of Paragraph (1) above do not apply:

(a) From ten a.m. to eight p.m., between June 1 and August 31; and

(b) From ten a.m. to seven p.m., otherwise;

(3) At any other location, at any time of the day or night;

"Defined food product" means any of the following:

(1) Prepackaged candies or desserts;

(2) Prepackaged frozen dairy products or frozen water-based food products;

(3) Soft serve or hand-dipped frozen dairy products or frozen water-based food products, or

(4) Prepackaged beverages, including water, soft drinks, fruit drinks and hydration/sports drinks.

[(C)] "Ice cream truck" means any [motor] motorized vehicle which is required to be registered by the Nevada Department of Motor Vehicles and which is used to vend any [of the following products, whether or not the truck carries other prepackaged food products:

(1) Prepackaged frozen dairy or water-based food products; or

(2) Soft-serve or hand-dipped frozen dairy or water-based products.] defined food product.

[(D)] "Ice cream truck business" means a business that operates [one or more ice cream trucks that travel] an ice cream truck that travels from place to place on the streets for the purpose of vending[.] defined food products.

[(E)] "Licensee" means the holder of an ice cream truck business license issued by the Department.

[(F) "Metro" means the Las Vegas Metropolitan Police Department.]

[(G)] "Vend" means to sell or offer to sell products from an ice cream truck.

SECTION 2: Title 6, Chapter 47, Section 20, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.020: It is unlawful for a person to:

(A) [Operate] Conduct, engage in, carry on, advertise, or market an ice cream truck business within the City without a license issued pursuant to this Chapter[;] for each truck operated in the business;

(B) [Maintain, manage, conduct, control or own] Conduct, engage in, carry on, advertise, or market an ice cream truck business that operates within the City unless the business is maintained and operated in compliance with this Title; or

(C) Vend from an ice cream truck or [operate] drive an ice cream truck for the purpose of vending therefrom without a valid work card issued pursuant to LVMC Chapter 6.86.

SECTION 3: Title 6, Chapter 47, Section 30, of the Municipal Code of the City of

Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.030: (A) On forms approved by the Department, [An] an application for an ice cream truck business license shall be filed with the Director. [and shall contain all of the information required by the Department.] Each principal of an ice cream truck business must [also] apply for and obtain approval for suitability in accordance with LVMC Chapter 6.06, subject to the payment of [an investigative fee of fifty dollars. The issuance of a license is contingent upon compliance with the work card and certification requirements of this Chapter.] applicable investigative fees. Upon completion of a required investigation, Metro will forward the application to the Department for appropriate action.

(B) Ice cream truck business licenses issued under this Chapter:

(1) Are issued on a per-vehicle basis;

(2) Are issued annually, whether on an initial or renewal basis, for the period for the period of April 1 through March 31 of the following year; and

(3) Are non-transferable.

SECTION 4: Title 6, Chapter 47, Section 40, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.040: (A) [In addition to and independent of any licensing or] Independent of any certification requirement of the Health District, an ice cream truck must first be inspected [and certified by the Department] by Department personnel and found to be in compliance with LVMC 6.47.100 before a business license may be issued or renewed for the operation of that truck. The applicant or licensee shall pay an inspection fee of fifty dollars for the first inspection. If an ice cream truck does not pass the first inspection, the applicant or licensee shall pay a reinspection fee of [twenty-five] fifty dollars for each [subsequent inspection] reinspection until the truck [is certified.] complies with LVMC 6.47.100.

(B) In connection with the initial licensing of an ice cream truck business, the applicant must demonstrate compliance with LVMC 6.47.050 and 6.47.110 before the issuance of the initial license. Following the issuance of an initial license, the licensee, on an ongoing basis and in connection with annual renewal, may certify compliance with those sections by means of an affidavit.

However, such certification by affidavit does not preclude the Department, at any time, from requiring actual proof of compliance with those sections.

SECTION 5: Title 6, Chapter 47, Section 50, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.050: No ice cream truck is eligible for a license, and no ice cream truck may be operated for the purpose of vending therefrom, unless the truck:

(A) [Has been certified by the Department and has displayed therein or thereon evidence of current certification.] Has been registered with the Nevada Department of Motor Vehicles and is properly displaying current registration plates; and

(B) Complies with any certification requirements of the Health District, and [has displayed therein or thereon] the applicant or operator, as the case may be, possesses evidence of current certification and compliance with Health District requirements.

SECTION 6: Title 6, Chapter 47, Section 60, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.060: (A) Each ice cream truck business license issued by the Department shall be subject to the requirements and limitations set forth in this Chapter and any other conditions specifically imposed upon the license. [A license is not transferable.] The annual license fee for [each person required to have] an ice cream truck business license shall be [one hundred dollars for each ice cream truck.] one hundred twenty-five dollars.

(B) For each license issued under this Chapter, the Department will issue a license decal. The decal shall be attached and displayed as set forth in LVMC 6.47.090.

(C) The Department may charge a decal replacement fee in the amount of twenty-five dollars, or in such other amount as the City Council may approve by resolution.

SECTION 7: Title 6, Chapter 47, Section 70, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.070: No person shall:

(A) Vend on any street at a location where the speed limit is greater than twenty-five miles per hour.

(B) Vend from an ice cream truck which is parked or stopped on a street within seventy-five feet of an intersection.

(C) Vend on a street except from the side of the truck away from moving traffic and as near as possible to the right-hand curb or edge of the street.

(D) Vend to a person standing in the roadway.

(E) Vend on a street unless there is a clear view of the ice cream truck for a distance of two hundred feet in each direction.

(F) Vend on a street unless the safety equipment described in Subsection (C) of Section 6.47.100 is activated a minimum of fifty feet before the ice cream truck stops to vend and for a minimum of fifty feet after operation of the ice cream truck resumes.

(G) Drive an ice cream truck on a street in reverse in order to vend.

(H) Stop on a street to vend within two hundred feet of any ice cream truck that has already stopped to vend on that street or another.

(I) Vend any item other than [the prepackaged food items described in Subsection (C) of Section 6.47.010 of this Chapter.] a defined food product.

(J) Vend or park an ice cream truck within one thousand feet of the outside perimeter of an elementary or middle school property until one hour after the end of the regular school day; provided, however, that the foregoing prohibition shall not apply on days when school is not in session nor on school property when vending has been approved in writing by the principal.

(K) Vend [earlier than ten a.m., nor later than seven p.m. or one-half hour after sunset, whichever occurs first.] at any time other than during an authorized vending period.

(L) Vend at [the same] a particular location more than once a day, or for longer than thirty minutes [at any one location, except as permitted under] continuously without moving the truck to another location at least one thousand feet away; provided, however, that the prohibitions contained in this Subsection (L) do not apply to vending locations and activities specifically authorized by a contractual arrangement with the City regarding a specific location.

(M) Consume alcoholic beverages or be intoxicated while vending.

(N) Vend within one thousand feet of a licensed concession stand located within

a City park when the concession stand is open for business, unless otherwise permitted under a contractual arrangement with the City regarding a specific location.

SECTION 8: Title 6, Chapter 47, Section 80, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.080: (A) 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:

(1) When the ice cream truck is stationary;

(2) [Earlier than ten a.m., nor later than seven p.m. or one-half hour after sunset, whichever occurs first;] At any time other than during an authorized vending period; or

(3) In such a manner as to create a noise disturbance as defined in LVMC Chapter 9.16.

(B) In connection with the issuance of a license, the Director may impose reasonable restrictions on the type and use of any sound, outcry, amplifier, loudspeaker or any other instrument or device for the production of sound employed on an ice cream truck in order to limit noise or prevent a noise disturbance as defined in LVMC Chapter 9.16.

SECTION 9: Title 6, Chapter 47, Section 90, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.090: Each ice cream truck shall have prominently displayed, on the upper left corner of the back of the vehicle, [an identification number provided by the Director. The display shall be of such color, size and placement that the identification number can be easily read at a distance of ten feet.] the license decal provided by the Department pursuant to LVMC 6.47.060. Failure to attach the decal in the correct location or to maintain it in a readable condition shall be a violation of this Chapter.

SECTION 10: Title 6, Chapter 47, Section 100, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.100: (A) A licensee shall maintain each of the licensee's ice cream trucks in such a condition that:

(1) All doors, windows, hoods and trunks open and close securely;

(2) The exterior of the ice cream truck is clean and in good repair;

(3) Advertising decals and price lists are placed only on the vending side of the ice cream trucks and use a maximum area of twenty-four square feet; [and]

(4) All windows are clear of signs and other obstructions[.]; and

(5) The licensed business name and business telephone number are displayed on both sides of the truck in letters with a minimum of height of three inches, made discernible from other messages on the truck by means of a minimum six inches of blank space around the business name and business telephone number.

(B) A licensee shall ensure the installation of, and shall maintain in good operating condition, the following safety equipment on each of the licensee's ice cream trucks:

(1) Warning signs painted or mounted on the front and back of each truck, with the words "CHILDREN CROSSING" appearing on a display that is eight inches high by forty-eight inches wide. At least one additional sign shall be painted or mounted on the rear of each truck above the first sign and shall read "WARNING" in English and "PRECAUCIÓN" in Spanish. All lettering shall be black lettering, at least four inches high, on a yellow background with a black [one-inch border] border a minimum of one-half inch around each sign; and

(2) A convex mirror mounted on the front and rear of the vehicle so that the driver, in his normal sitting position, can see the area in front of the truck obscured by the hood and an area in the rear extending across the truck and four feet to the rear of the bumper.

(C) A licensee shall ensure the installation of, and shall maintain in good operating condition, the following additional safety equipment on each of the licensee's ice cream trucks:

(1) A flashing amber warning light on the roof as required by NRS 484.582;

(2) A signal arm that can be extended horizontally from the left side of the truck. [duplicating the design, size and specifications established by the Director.] This arm shall be yellow in color and contain on the rearward surface two alternately flashing amber lights three to five inches in diameter. [visible at three hundred feet to the rear in normal sunlight upon a straight level street.] The bottom of the signal arm shall be forty-two inches above the street;

(3) Standard vehicle warning flashers; and

(4) Any other safety equipment required by the Nevada Revised Statutes.

SECTION 11: Title 6, Chapter 47, Section 110, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.110: Each [ice cream truck] licensee must [file with the Department] obtain through a properly licensed insurance company, and thereafter maintain in full force at all times, public liability and property damage insurance which shall protect the public against any and all claims for damages for personal injuries, including death, and against claims for property damages which may arise out of or in connection with any operations or activities of an ice cream truck. Such insurance shall be in amounts of not less than one hundred thousand dollars for injuries, including death, to any one person; subject to the same limit for each person in an amount of not less than three hundred thousand dollars for injuries, including death, to more than one person on account of any one accident; and not less than twenty-five thousand dollars in property damage coverage for each accident. The policy or policies of insurance must name the City as an additional insured, and proof of the required coverage must be provided to the Department.

SECTION 12: Title 6, Chapter 47, Section 120, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.120: During any time that an ice cream truck is in operation for business, no one other than the driver and one additional person may occupy or ride in the vehicle. The driver and additional occupant, if any, must be either the licensee or an employee of the licensee.

SECTION 13: Title 6, Chapter 47, Section 130, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

6.47.130: [(A)] An ice cream truck business shall not be subject to the provisions of LVMC Chapter 6.62[.], but shall be subject to all applicable regulations and requirements of the Health District.

[(B) The Director may exempt from any requirement of this Chapter (other than the requirement to obtain a business license) any ice cream truck which is not used to vend to persons under the age of fourteen. However, nothing in this Section shall be deemed to affect the application of any independent regulation or requirement of the Health District.]

SECTION 14: The provisions of this Ordinance shall become effective the day

following its publication. However, licensees of ice cream truck businesses that are existing on the effective date of this Ordinance shall have 90 days following the effective date to comply with the provisions of Paragraph (5) of Subsection (A) of Section 6.47.100, as added by Section 10 of this Ordinance.

SECTION 15: If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

SECTION 16: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

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SECTION 17: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk

APPROVED AS TO FORM:

Halstead 8-17-10
Date

The above and foregoing ordinance was first proposed and read by title to the City Council on the _____ day of _____, 2010, and referred to the following committee composed of _____ and _____ for recommendation; thereafter the said committee reported favorably on said ordinance on the _____ day of _____, 2010, which was a _____ meeting of said Council; that at said _____ meeting, the proposed ordinance was read by title to the City Council as first introduced and adopted by the following vote:

VOTING "AYE": _____

VOTING "NAY": _____

ABSENT: _____

APPROVED:

By _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BEVERLY K. BRIDGES, MMC
City Clerk