



November 21, 2017

City of Phoenix, Office of Mayor  
The Honorable Greg Stanton  
200 W. Washington St.  
Phoenix, AZ 85003  
[mayor.stanton@phoenix.gov](mailto:mayor.stanton@phoenix.gov)

**SENT VIA U.S. MAIL AND E-MAIL**

Re: Mr. Lee Sepanek's Christmas Display

Dear Mayor Stanton:

For over thirty years, Lee and Patricia Sepanek have brought holiday cheer to their Phoenix neighborhood by decorating their home with Christmas lights, at significant expense to themselves and through strenuous personal efforts. Theirs has become one of the most impressive and anticipated holiday displays in the Valley. They then open their beautiful display up to friends, neighbors, and visitors throughout the City and State.

Unfortunately, in October of this year, City representatives threatened to shut down the Sepaneks' display and ordered them to stop offering hot chocolate and cookies to visitors. This, the City claimed, violated the City's "Mobile Food Vending Ordinance." Among other things, the City demanded that the Sepaneks obtain space at a restaurant to serve as a vending facility for their hot chocolate—which, of course, is simply hot water mixed with pre-packaged powder.

The Goldwater Institute and the Rose Law Group represent Mr. Sepanek, and we are writing to address these threats and demands. We believe the City has engaged in inappropriate and perhaps unlawful activity in two instances.

First, it is our understanding that City officials requested a meeting with Mr. Sepanek on or about October 4, 2017 where they made a series of demands regarding Mr. Sepanek's light display. These included a requirement that Mr. Sepanek hire several private individuals to direct traffic in the neighborhood and that he coordinate with a nearby bank to seek permission to allow tour buses and vehicles—over which Mr. Sepanek has no control—for loading and unloading passengers. City officials threatened to "shut down" Mr. Sepanek's display if these demands were not met.

It is, of course, troubling that the City would make these demands in a private meeting and without citing any legal authority. We are therefore writing to ask that you

state *with specificity* and in writing any demands City staff has made or would continue to make regarding Mr. Sepanek's Christmas display.

Second, on or about October 16, 2017, Mr. Sepanek was informed by City staff, including Code Compliance Manager Bob Lozier, that his offering hot chocolate to visitors at his Christmas display was impermissible under City ordinance. Specifically, Mr. Sepanek was informed in an e-mail by a City representative that, "I do not see a circumstance where you could [offer hot chocolate to visitors] without violating city code." That same e-mail referenced Phoenix's Mobile Vending Ordinance (Phoenix City Code Art. XIV, § 10-160).

Given its vagueness and overbreadth, significant portions of Phoenix's Mobile Vending Ordinance are likely facially invalid, and in any event, do not apply to Mr. Sepanek's activities.

For example, Phoenix's Mobile Vending Ordinance prohibits any person from "engag[ing] in a mobile vending operation...without possessing a valid license." *Id.* at 10-161(A). A "mobile vending operation" is defined as "peddling, vending selling, serving, displaying, offering for sale or giving away...food from either a mobile vending unit or a mobile food vending unit located on private property." A "mobile food vending unit" includes any "pushcart, stand, display, blanket, [or other] ground covering." While this language might technically be read to apply to a table sitting in a homeowner's driveway, that seems to us to be an unreasonable interpretation of an ordinance designed to apply to *mobile* food vending.

Under the extraordinarily broad interpretation the City is using, however, it appears as though giving away Halloween candy or opening a child's lemonade stand would be unlawful without a City license.

Because City licenses require applicants to "pay a nonrefundable application fee of three hundred and fifty dollars," presumably, our neighborhood Girl Scouts, Halloween house, and lemonade stand entrepreneurs would risk prosecution if they do not pay this outrageous licensing fee. *Id.* at § 10-162(A). But more: in addition to the \$350, applicants for licenses must also provide the City with twenty-six separate pieces of personal information, including his or her "[h]eight, weight, and color of hair and eyes" as well as "[one] complete set of fingerprints taken by a law enforcement agency." *Id.* at § 10-163.

And if any City resident decided to give away candy or refreshments without meeting these onerous requirements, they would be subject to a "civil sanction" of up to \$2,500. So much for the neighborhood potluck.

Astonishingly, City officials have also told Mr. Sepanek that even if he were to comply with this labyrinth of requirements to obtain a "mobile food vending" license, there would still be "no circumstance" under which he could offer hot chocolate to Christmas visitors because doing so would purportedly violate other zoning laws. As a result, we are also asking that you state *with specificity* and in writing whether Mr. Sepanek may offer cookies and hot chocolate to visitors, and if so, whether a "mobile food vending" license is required.

Finally, pursuant to Arizona Revised Statutes § 39-121 *et seq.*, please promptly produce copies of all public records in your custody pertaining to Mr. Sepanek's Christmas display, including all communications between and among City personnel and all communications with Mr. Sepanek related to the Christmas display and the offering of cookies and hot chocolate.

We would welcome the opportunity to discuss this matter with you at any time.

Should you have any questions, please do not hesitate to contact me at (602) 462-5000 or [jriches@goldwaterinstitute.org](mailto:jriches@goldwaterinstitute.org).

In the meantime, from all of us, we wish you a very Merry Christmas and joyful holiday season.

Warm regards,

A handwritten signature in black ink, appearing to read "Jon Riches", with a long horizontal flourish extending to the right.

Jon Riches  
Director of National Litigation

cc. Council Members  
Neighborhood Code Compliance