

Plan Commission  
Meeting of June 18, 2018  
Agenda Item #9, Legistar #51574, Free-standing Vending

The proposed ordinance would allow free-standing vending ("FSV") on private property with virtually no regulation.

Presumably, the purpose of requiring conditional use approval for FSV on residential lots is protection of residents' quality of life. Yet in parts of the City, such as the Marquette neighborhood, uses are intermixed and residents would not have any protection. A few examples:

- There are houses along East Wilson zoned NMX located next to houses zoned residential -- FSV could take place on the driveway, or even in the backyard.
- There are TE parking lots abutting residential properties (e.g., 210 S Dickinson).
- There are a number of parking lots along Williamson (e.g., Struck & Irwin) next to primarily residential uses, whether zoned residential or zoned PD.

The draft ordinance is lacking in many respects:

- Traffic Engineering and Zoning would need to approve the site plan, but the draft ordinance does not specify any approval criteria (other than not within 25 feet of a restaurant or restaurant-tavern).
- The 25-foot restriction does not extend to protect restaurant-nightclubs (e.g., Hotel Red, Weary Traveler, and Bandung).
- No penalties are provided. What if a vendor sells until 1:00 a.m.? That would be a violation of the ordinance, but there are not any consequences (e.g., a fine).
- Unlike street vending, a license is not required. Proposed 28.151 does require a vendor to maintain a valid vending license, but the vending licensing provisions, MGO 9.13, only apply to vending on public streets.
- The "Free-Standing Vending" definition does not exclude yard sales as defined under MGO 28.211.

The street vending ordinance has many restrictions that promote the public health and safety. The proposed FSV ordinance lacks these protections.

- Noise levels emanating from the vending site shall be kept to a minimum, shall not be directed toward the street or sidewalk, and shall be reasonable so as not to disturb the peace and quiet of those in the vicinity, including but not limited to residents, merchants, and customers.
- No sound amplification shall be permitted at a non-cart vending stand. Vendors utilizing an enclosed vending cart may use amplification inside an enclosed vending cart only, and any music or other audio shall be kept to a volume such that it cannot be heard outside of the cart beyond the first customer in line at the window or service area.
- No audio or video equipment, such as speakers and video display monitors, shall be permitted at a non-cart vending stand, nor affixed to or used outside a vending cart. This ordinance shall apply in addition to the general restrictions regarding noise and amplification found in Chapter 24 of the Madison General Ordinances. Vendors shall be subject to all applicable City ordinances regarding noise and amplification and this ordinance shall not be interpreted to expand or contradict those other ordinances. In the event of a conflict, the more strict regulation or ordinance shall apply.

- Generators. Mall/Concourse vendors may use one generator in lieu of an AC electrical source. Generators must operate at 60 decibels or lower.
- All street vending equipment and displays shall be placed only upon paved surfaces [concrete, asphalt, cement, brick, pavers, or other impervious surface].
- No vending equipment or vending activities shall be permitted adjacent to any truck, freight or passenger loading zone or adjacent to any parking space for people with disabilities or loading zone.
- No vendor shall be permitted to use any of the [public] amenities, such as benches, flower planters, trees, bus shelters, kiosks, light poles or any other utility poles for display of merchandise or to attach any ropes or other vending equipment to any of the aforementioned.
- Vending equipment and displays, including signage, shall be directed away from the street. In addition, merchandise shall be displayed in a manner in which attention to it is not focused from the street and which does not require or encourage prospective buyers to enter or walk upon the street in order to examine it.
- Vendors must maintain their vending site areas and vending equipment in a clean and hazard-free condition
- Unless otherwise specified, each vendor vending from an enclosed cart or push cart may only use the vending cart, one (1) chair, and one (1) trash receptacle. Vendors vending from an enclosed cart or push cart are limited to the equipment listed above and may not use any additional freestanding equipment, however umbrellas or awnings securely attached to the cart may be used.
- All equipment used at the vending site shall be in a clean, sanitary, hazard-free condition and maintained in a presentable appearance and in good repair, without noticeable holes or other structural defects. Visible exterior surfaces of all equipment shall be maintained so as to prevent chipping, cracking or other deterioration of the paint or exterior surface.
- A vendor shall be present within the vending site at all times during which items are displayed or sold, except that a vendor may leave his or her vending site unattended during lawful vending hours for a maximum of ninety (90) minutes
- All food vendors shall provide a trash receptacle of at least 10 (ten) gallons within their vending site for customer use.
- Except in the case of sidewalk cafes having permanent facilities approved as a conditional use by the Plan Commission, all tables, chairs, and all other materials and equipment must be removed from the site no later than thirty (30) minutes after the close of business until normal opening of business each day.

Many of the issues and concerns that make outdoor patios a conditional use also apply to FSV. Whether a FSV is prohibited in any given zoning district, permitted, or subject to conditional use, should track the "outdoor eating area associated with food & beverage establishment" under the various zoning tables.

Respectfully Submitted,  
Linda Lehnertz