

**LEGISTAR # 50629 – Version 1**

DRAFTER'S ANALYSIS: This ordinance amends the Late Night Vending License procedures to make several changes for the upcoming vending season and to phase out Late Night Vending over a period of 5 years, ending on April 14, 2023. This amendment eliminates the existing late night vending sites and zones and creates a procedure for sites and zones to be created by Planning staff with written approval of the Chief of Police or designee. The Director of the Department of Planning and Community and Economic Development or designee (i.e. Street Vending Coordinator) must create the available sites and zones before April 1, the deadline for applying for a late night vending license. Beginning with this vending season, only applicants who held a Late Night Vending License in at least one of the past 2 years will be eligible to apply. Eligible applicants will be assigned to one of the newly-created sites based on seniority, although the designee may adjust site assignments to achieve an appropriate mix and balance of food / cuisine. Vendors can be moved and sites moved or eliminated during the season, in the discretion of the designee with the approval of the police department. These new procedures will continue for 5 years, after which time the Late Night Vending program will expire. During those 5 years, if any vendor does not purchase a license, they will lose eligibility for future late night vending licensing. These changes do not impact a vendor's ability to be licensed for daytime vending under the City's other street vending programs such as Mall/Concourse Food Vending, Camp Randall, City-wide food vending, etc. If adopted, this ordinance will take effect for the 2018-2019 vending season which begins on April 15, 2018.

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The Common Council of the City of Madison do hereby ordain as follows:

Subdivision (n) entitled "Late Night Vending (LNV) Areas" of Subsection (6) entitled "Regulations and Procedures for Vending on the State Street Mall/Capitol Concourse" of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

“(n) Late Night Vending (LNV) Areas.

1. Certain areas within the Mall/ Concourse and downtown area are established for vending food and drink between the hours of 9:00 p.m. and 4:00 a.m. The Late Night Vending Areas established under this subsection, and the availability to apply for a Late Night Vending License hereunder shall continue until April 14, 2023, after which time the Late Night Vending Areas shall no longer be in effect and no new licenses for Late Night Vending shall be issued.

Vendors operating as licensed Late Night Vendors are not considered Mall-Concourse Food Vendors, do not need a Mall/Concourse Vending License, and need not participate in the food cart review. Vendors operating as licensed Late Night Vendors are not subject to other portions of Section 9.13(6) or the Regulations Governing Vending on the State Street Mall/Capitol Concourse adopted under Sec. 9.13(6)(c), except Secs. 9.13(6)(k), (exclusive use and special events), (6)(l)2. (use of electricity), (6)(l)3. (emergency vehicle access), (6)(l) 4. (relocation), (6)(m) (insurance), and those Regulations listed in Sec. 9.13(4)(s) (safety requirements for non-Mall/Concourse food vending). Late Night vending is subject to Sec. 9.13(4), all other applicable portions of this Ordinance, and applicable traffic and parking laws.

2. Licenses Required, Eligibility. Beginning with the 2018-2019 vending season, only those applicants who held a valid Late Night Vending License during the 2016-17 or 2017-2018 vending season are eligible for a Late Night Vending License and site or zone assignment, determined by the names printed on the past license. For purposes of eligibility under this paragraph, all names printed on the past license must match the applicant names.

One (1) Late Night Vending License shall be required for each vending cart or food stand and shall be issued in the name of the individual or business entity responsible for the Late Night Vending activities, which must match the name(s) on the past license. Additionally, every person working or performing vending activities as defined in Sec. 9.13(1) must hold a valid basic street vendor license under 9.13(3).

No person shall vend (as defined in Sec. 9.13(1)) in an LNV area during LNV hours without the licenses required hereunder and without an LNV zone or site assignment.

3. Late Night Vending Areas. The Late Night Vending Areas established herein shall be shown on an official map kept on file at the Office of Business Resources ("official LNV map"). The available late night vending areas are as follows:
  - a. 2017-2018 Trial Zones. During the 2017-2018 vending season, Creation of Site or Zones. Beginning with the 2018-2019 vending season, the Director, or designee, with the written approval of the Chief of Police or designee, may establish Late Night Vending zones or sites to accommodate timely applicants eligible for licensing under sub. (n)2. above. Such sites or zones may be located within or outside the Mall/Concourse Vending Area (but not in a residential zoning district), that provide adequate legal parking space(s) for currently licensed late night vendor(s) who agree to move from their assigned Zone or site to the Trial Zone for some or all of the vending season. Only a licensed Late Night Vendor who has been assigned to a trial zone may vend in a trial zone. Assignment of a vendor to a trial zone shall be at the discretion of the Street Vending Coordinator. Any such trial zones shall cease to exist when vending licenses expire on April 14, 2018 subject to applicable placement requirements elsewhere in this ordinance. A "site" under this section means a specific site on a sidewalk or other non-roadway right-of-way such as a pedestrian mall. A "zone" means a geographic area identified by a range of street addresses and/or block number. When a zone is established, vending may occur only within a legal parking space on the roadway within the zone. The Director/designee shall notify eligible potential vendors and the VOC of the sites and zones established under this section prior to the deadline for applications each season.
  - b. Assignment. The Director/designee shall assign Late Night sites or zones to eligible applicants based on seniority and mix and balance as described in Sec. 9.13(6)(n)4.b. The Director/designee shall notify each applicant vendor of the site or zone assignment prior to April 15 of the licensing year in question.

The Director/designee may relocate any licensed late night vendor to another site or zone at any time during the season, and may create, move, or eliminate sites or zones for such purpose with the written approval of the Chief of Police or designee.
  - c. Zone C: 400 Block of North Broom Street. Late Night Vending may occur on the west side of the 400 block of North Broom Street beginning with the first legal parking space to the south of the northern-most driveway on the west side of the street, and anywhere that street vending may lawfully occur on the east side of the 400 block of North Broom Street, as shown on the official LNV map. A maximum of two (2) licensed Late Night Vendors may vend from legal parking spaces within Zone C at any one time. Only licensed Late Night Vendors who have been assigned to Zone C may vend in Zone C, and vendors will be assigned to a zone by seniority under Sec. 9.13(6)(n)4.b.
  - d. Concrete Park/Frances Plaza: 500 Block of North Frances (L3). Late Night Vending in this area may occur at three assigned sites: two (2) full-sized food cart sites and one (1) site for a full-sized or small push cart, with each site location shown on the official LNV map and is prohibited in any other location. Sites will be assigned by seniority under Sec. 9.13(6)(n)4. See Sec. 9.13(6)(n)6.a. for the definition of small push carts.
  - e. University and Lake Site (L4). One (1) small push cart site shall be located on the sidewalk on the north side of University Avenue near the northeast corner of the intersection with Lake Street, with the exact location determined by the Vending Coordinator and shown on the official LNV map. This site will be assigned to a licensed Late Night Vendor by seniority under Sec. 9.13(6)(n)4. See Sec. 9.13(6)(n)6.a. for the definition of small push carts.

f. ~~Zone F: North Lake Street and University Avenue. Zone F is located on the west side of the 300 block of North Lake Street in the northern-most parking stall at the intersection with University Avenue. A maximum of one (1) licensed Late Night Vendor may vend from a legal parking space within Zone F at any one time. Only a licensed Late Night Vendor who has been assigned to Zone F may vend in Zone F. During the 2017-2018 vending season, the vendor will be assigned to the zone by the Street Vending Coordinator. Thereafter, the vendor will be assigned to the zone by seniority under Sec. 9.13(6)(n)4.b.~~

4. Application, Site Assignment. Vendors Applicants holding a basic street vendor license and who are eligible under sub.(n)2. above may apply for a Late Night Vending License at the Office of Business Resources, using an application form created by the Vending Coordinator, as follows:

a. Deadline to Apply and Use License. Applications for an LNV zone or an assigned site must be filed no later than April 1 to be eligible for zone or site assignment for the upcoming vending season (April 15-April 14). The vendor must accept the zone or site in writing and purchase a Late Night Vending License within ten (10) calendar days of receiving notification of the assignment, or will forfeit the assignment. Failure to use an assigned LNV zone or site by June 1st will result in forfeiture of the assignment. ~~Only one (1) Late Night zone or site will be assigned per vendor, per season, and such assignments are not transferrable.~~ Late applicants and vendors who forfeit their Late Night assignment shall permanently forfeit their eligibility for a Late Night Vending License and Late Night site or zone assignment for that season, and in the future.

b. Late Night Site Assignment Procedure. Site and zone assignment procedure shall be based on seniority as described below. Only one Late Night zone or site will be assigned per Late Night Vending applicant, per season. Site or zone assignments and Late Night Vending Licenses are not transferrable between individuals or business entities under any circumstances, including the sale or acquisition of business, business name, vending cart, or equipment.

All eligible applicants shall be ranked according to a seniority system. Seniority shall be calculated by counting the number of vending seasons that the ~~vendor applicant~~ has purchased an LNV license (of any duration) issued under Secs. 9.13(3)(a) 1. or 2., counting backwards from the present, and subtracting any demerit points (see Sec. 9.13(6)(n)5.). However, a vendor may ~~take~~ have taken, prior to the 2018-19 vending season, one (1) vending season as a sabbatical (not purchase a license that season) without losing seniority, but that year will not be counted toward the ~~vendor's applicant's~~ total number of years of seniority. If a vendor ~~goes~~ had two (2) consecutive vending seasons prior to the 2018-19 vending season without purchasing a LNV license, the vendor will lose all years of seniority and be placed at the bottom of the seniority list upon their next application for a site. Beginning with the 2018-2019 vending season, no LNV sabbaticals will be allowed and any one year without a LNV license will result in loss of seniority and permanent loss of eligibility for future LNV licensing.

~~For individual~~ In determining seniority of applicants, the business and individual names on the current LNV application and the LNV license used for seniority must be the same. If more than one applicant was issued an LNV license on the same date, the time of day that the license is created will determine seniority. If the time is not available, seniority will be determined by a coin toss conducted by the Vending Coordinator or designee.

Applicants shall list three (3) zone and/or site preferences on the application. The ~~vendor applicant~~ with the most seniority (minus any demerit points) will be assigned his/her first preferred zone or site, the next ~~vendor applicant~~ assigned to his/her first available preferred zone or site, and so on; until all eligible applicants have been assigned a zone or site or until all are full. ~~If applicants remain after all LNV areas are filled, a waiting list will be created,~~

~~using the same seniority system. Late applicants and vendors who forfeit their Late Night assignment will be placed at the bottom of the waiting list. Any zone or site that becomes available during the vending season after initial assignments have been made shall be offered to the highest ranking vendor on the waiting list. There shall be no waiting list for Late Night Vending. In addition, the Designee of the department may consider whether the site assignments under the above system result in an inappropriate mix and balance, and may, upon consultation and approval of the applicant(s) affected, rearrange site assignment to achieve an appropriate balance. The designee may consider the extent to which the food sold at one site is different from that sold at adjacent sites or otherwise proximately available, and the designee may give great consideration to maintaining the diversity of vending in order to achieve a better balance of vendors and products so as to better serve the public.~~

5. Demerit Points for Late Night License Applications. One (1) year of seniority will be subtracted for each demerit point described below:
  - a. One (1) demerit point will be assessed for any violation of Sec. 9.13, the Regulations adopted thereto, or any other violation listed in Sec. 9.13(8)(a) (except for serious health code violations described below). A violation counts as a demerit point if charged in a citation or civil or criminal complaint with a date of violation in the previous vending season.
  - b. Serious Health Code Violations. Five (5) demerit points will be assessed if the applicant's food and drink permit has been suspended or revoked for seven (7) or more consecutive days during the previous vending season, or if the applicant's vending cart or mobile base kitchen has been ordered by the Public Health Madison and Dane County to suspend or cease all operations for seven (7) or more consecutive days during the previous vending season.
  - c. For purposes of Sec. 9.13(6)(n)5.a. and b., violations issued to the person named on the basic street vending license, the holder of ~~the mobile cart license(s)~~ any health department license for the vending operation, if applicable, and the person and/or business entity listed as the applicant for the Late Night Vending license will all be counted.
  - d. If an applicant's vending license has ever been suspended or revoked under Sec. 9.13(8), the number of days the license was been suspended or revoked shall be subtracted from the total number of days counted for seniority. Suspensions or revocations against the person named on the basic street vending license and the person or business applying for the late night vending license shall be counted.
6. Late Night Vending License Fees. Late Night Vending licenses are issued ~~per food vending cart or stand~~ on an annual basis, valid from April 15 to April 14, with the following fees:
  - a. Small push-carts that can be moved by hand, of a size and construction that does not meet the definition of "vehicle" under Wis. Stat. § 340.01(74) and that fit entirely within a footprint of 4 feet by 8 feet: \$200/annual.
  - b. All other food vending carts or stands: \$500/annual.
7. Violations. No person shall conduct the activities for which an LNV license is required herein without having been issued a valid LNV license, and no person shall vend in any LNV zone or site without being assigned to that zone or site, and no person shall vend from a location other than a valid Late Night Vending Area during hours when street vending is not permitted elsewhere in this ordinance. ~~For those areas listed in Sec. 9.13(6)(n)3., no person shall vend in a location other than one of the assigned sites. No person shall violate any other provision of Sec. 9.13(6)(n)."~~