



Legislation Details (With Text)

File #: 29455 **Version:** 1 **Name:** Exclusive use vending
Type: Ordinance **Status:** Passed
File created: 3/12/2013 **In control:** VENDING OVERSIGHT COMMITTEE
On agenda: 4/16/2013 **Final action:** 4/16/2013
Enactment date: 4/25/2013 **Enactment #:** ORD-13-00067

Title: Amending Sections 9.13(2) and (6)(g), repealing and recreating Section 9.13(6)(k), amending Sections 9.54(13), 10.056(5)(b)4. and (7)(a) and creating Section 10.056(5)(b)6. of the Madison General Ordinances to reduce the number of resolutions required each year for special event vending approvals, and clarify the procedures for suspension of rules and invalidation of vending licenses and T, E and M permits for street use permitted events.

Sponsors: Michael E. Verveer

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
4/16/2013	1	COMMON COUNCIL	Adopt	Pass
3/27/2013	1	VENDING OVERSIGHT COMMITTEE		
3/19/2013	1	COMMON COUNCIL	Referred	Pass
3/12/2013	1	Attorney's Office/Approval Group	Referred for Introduction	

Fiscal Note

No significant fiscal impact is anticipated.

Title

Amending Sections 9.13(2) and (6)(g), repealing and recreating Section 9.13(6)(k), amending Sections 9.54(13), 10.056(5)(b)4. and (7)(a) and creating Section 10.056(5)(b)6. of the Madison General Ordinances to reduce the number of resolutions required each year for special event vending approvals, and clarify the procedures for suspension of rules and invalidation of vending licenses and T, E and M permits for street use permitted events.

Body

DRAFTER'S ANALYSIS: This ordinance makes changes to Sections 10.056 (Street Use) and 9.13 (Street Vending) regarding special events. This ordinance will make the "exclusive use" process in Sec. 9.13(6)(k) more efficient. All special events go to the Street Use Staff Commission for a Street Use Permit, but only the Council can approve "exclusive use" (invalidation of vending licenses and selection of vendors). Only the Council can suspend the "homemade/handcrafted" rules to allow certain food and merchandise to be sold at a special event on the Mall/Concourse. Under current ordinances, a separate resolution is required for each event seeking these approvals. This results in over 25 resolutions per year, which have traditionally been referred to at least 3 committees.

Under this ordinance, Council approval will still be required but all events will be listed on one "master" resolution. The resolution would include a list of each event and the approvals requested. If an event is requesting these approvals for the first time, the Parks Division will highlight that on the master resolution and include more details. If request is made after the master resolution has been adopted, a separate resolution will be prepared. The criteria for granting special vending approvals is not changed by this ordinance, and it is recommended that the master resolution be referred to the Vending Oversight Committee before action by the

Council.

Section 9.13(6)(k) will be repealed and recreated to make it more understandable. The phrase “exclusive use” is a misnomer and will be replaced with “invalidation of vending licenses” and “selection of vendors” as appropriate. The vending rules that can be suspended will be clarified. Sec. 9.13(2) is being amended to clarify which vendors and participants must be included on the event sponsor’s Special Event Umbrella Vending License, to codify current practice. This ordinance also makes it clear that invalidation of licenses applies to T, E and M Permits under Sec. 9.54 and that event sponsors may, but are not required to, include any T, E or M permit holder in their event.

This ordinance would cap the number of days for a “Serial Event” (identical single-day street closures over one year) at 15 per year, and not more than once per week, however the Dane County Farmer’s Market would be grandfathered because it occurs on more than 15 days per year. Other housekeeping changes are made to Sec. 10.056 to streamline procedure.

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

1. Subsection (2) entitled “Special Event Umbrella License” of Section 9.13 entitled “License for Selling on Public Streets” of the Madison General Ordinances is amended to read as follows:

“(2) Special Event Umbrella License.

- (a) Requirement. Special Event sponsors shall purchase Aan umbrella Special Event Vending License is available to cover the street vending activities of all persons who will be vending solely as a participant in a special street use permitted event for which a street use permit has been issued under Sec. 10.056, MGO, or a city-sponsored event. The Special Event Vending License is required for any event participant conducting activities for which a license would be required by Sec. 9.13 or an “E Permit” would be required by Sec. 9.54, except currently-licensed street vendors or Sec. 9.54 permit holders that the sponsor has allowed to remain in their assigned site within the event perimeter. The event sponsor need not include the following participants on the Special Event Vending License: licensed street vendors, sidewalk cafes and merchant vendors with assigned sites within the event perimeter (if not invalidated under Sec. 9.13(6)(k)1.b.), T and E-permit holders under Sec. 9.54 with assigned sites within the perimeter (if not invalidated under Sec. 9.13(6)(k)1.b.) and authorized event participants using a table to distribute information but not making any sales whether or not that person holds a T permit. Participants covered by the Special Event Vending License are subject to any alternate vending rules established pursuant to Sec. 9.13(6)(k)1.c.
- (b) Application. Application for a Special Event Vending License shall be filed with the Parks Division on a form designed for that purpose. The application shall include information about the event and event sponsor, a list of all participants required by sub. (a) who will be vending during the event, proof that each participant holds of a State of Wisconsin seller’s permit (if required) as evidenced by the seller’s permit number or a statement from an employee of the sS tate of Wisconsin Department of Revenue that a seller’s permit will be issued, the name of the event sponsor and proof that the event sponsor holds adequate liability insurance as required in Sec. 9.13(6)(m). The license shall also be subject to any rules and regulations established pursuant to Sec. 9.13(6)(k).
- (c) Licenses and Fees. Special Event Vending Licenses shall be issued in the name of the special event sponsor, who shall be responsible for the conduct and supervision of all vending activities under the Special Event Vending License, whether or not said event sponsor is present at the vending location, however this does not preclude enforcement of ordinance violations against individuals persons conducting the vending activities under such license. Activities conducted under the Special Event Vending License are subject to any special rules established under Sec. 9.13(6)(k). The fees for a Special Event Vending License shall be based on the number of vendors participating in the special event, and shall cover all street vending activities for the duration of the special event. The license shall make reference to the approved Street Use Permit and shall set forth the start and end times and date(s) of the event, the approved location and perimeter of the special event, including vending locations (if specified), and shall be valid only during the date(s) and at the location(s) specified. The Special Event Vending

License fee is based on the number of vendors participating in the event who are required to be listed by sub. (a), and covers all such street vending activities for the duration of the event. Fees for a Special Event Vending License approved by the Parks Division are payable to the City Treasurer as follows:

1-25 vendors	\$350
26-100 vendors	\$575
101-300 vendors	\$800
301 or more vendors	\$1350
City-sponsored event	(No fee if entirely sponsored by the City)"

2. Subdivision (g) entitled "Mall/Concourse Vending License Required" 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:

"(g) Mall/Concourse Vending License Required. No person shall sell or offer to sell, any goods, foodstuffs, or any other article of any kind or otherwise conduct any of the activities described in Sec. 9.13(1) on the State Street Mall/Capitol Concourse without holding a valid Mall/Concourse Vending License or being designated as a primary vendor on a valid Mall/Concourse Vending license issued to a corporation, cooperative or partnership, or being one of five supplemental food vendors employed by a licensed Food Vendor, or being one of two primary vendors named on a valid Mall/Concourse Arts and Crafts vending license, in addition to holding all other licenses and permits which may be required by law or ordinance. A Mall/Concourse Vending license ~~shall~~ is not be required ~~when the for a~~ vendor ~~holds a valid participating under~~ Special Event Vending License pursuant to Sec. 9.13(2) herein. Only one Mall/Concourse Vending License in each category listed in Sec. 9.13(6)(h)2., i.e., arts and crafts, food, sidewalk cafe, merchant vendor, may be issued to a vendor for any single vending period. A Mall/Concourse license issued under this section shall be valid only for the duration of the basic street vendor license required by Sec. 9.13(3) and issued to the vendor under Sub. 9.13(3), herein. This paragraph shall not apply to vendors operating in late-night food vending areas under Sec. 9.13(6)(n)."

3. Subdivision (k) entitled "Vending and Exclusive Vending Rights During Special Events" 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 repealed and recreated to read as follows:

"(k) Vending During Street Use Events.

1. Special Event Vending Approvals. When a Street Use Permit is requested under Sec. 10.056 (a "street use event"), the applicant may request one or more of the following special approvals: invalidation of street vending licenses and Sec. 9.54, MGO, permits, permission to select participating vendors for the event, and suspension of some or all restrictions on street vending under this ordinance (collectively, "approvals"), using the procedures below. Any approvals under this section are subject to the issuance of a valid Street Use Permit for the event.

a. Invalidation of Vending Licenses. To encourage the integrity, comprehensiveness and success of a street use event taking place on any street, alley, sidewalk or public square in the City, the applicant may request that some or all categories of street vending license(s) or permits issued under Sec. 9.54 ("licenses") will not be valid within the perimeter of the street use event. Invalidation of licenses shall only occur within the perimeter approved in the Street Use Permit. Invalidation shall not be approved more than ten (10) times per year at the same location (i.e. same street block.) Invalidation of licenses is not available for serial street use permits of more than five (5) days.

When licenses are invalidated, street vendors or permit holders under Sec. 9.54 ("licensees") whose licenses have been invalidated cannot conduct the activities authorized by their license in anywhere within the perimeter of the event, unless selected by the event sponsor under Sec. 9.13(6)(k)1.b. ("Selection of Vendors.") Licensees with assigned sites inside the event perimeter cannot operate from the assigned site during the event. Such licensees may operate outside the event perimeter only as follows: by moving into an unoccupied vending site outside the event perimeter

- if allowed for that type of vending elsewhere in Sec. 9.13, by following any applicable procedures for relocating under Sec. 9.54, or if the City assigns the licensee a temporary site under Sec. 9.13(6)(k)3.
- b. Selection of Vendors. A street use applicant may request permission to select vendors to participate in the applicant's event. If approved, the event sponsor must obtain a Special Event Umbrella Vending License under Sec. 9.13(2) covering all persons selling food or any other item as part of the event, if required to be listed on such license by Sec. 9.13(2).
 - c. Suspension of Rules: A street use applicant may request suspension of specific provisions of Sec. 9.13 or the regulations adopted thereto within the perimeter and for the duration of a street use event, and may request alternate vending rules for the event. This option is available for events held anywhere in the city where this ordinance restricts vending to certain types of food or articles, or only from assigned sites. It is not necessary to suspend the rules regarding vending equipment size or placement for vendors operating under a special event umbrella license within the perimeter of a street use event, however, all applicable state and local health, electrical and fire code provisions will continue to apply and cannot be suspended under this procedure. If granted, the rules and procedures approved through this process will control over any conflicting section of Sec. 9.13 or the Regulations.
 - d. 700-800 Blocks of State Street -Suspension of Rules. Certain vending rules may be suspended by the Street Use Staff Commission for street use events held entirely within the "podium area" of the 700 block of State Street, or anywhere in the 800 block of State Street. The Street Use Staff Commission may approve the suspension of portions of Sec. 9.13 and the Mall/Concourse Regulations to allow vending of non-personally prepared food and non-handcrafted items within the event. The street use applicant must demonstrate that vending such items is necessary to ensure the integrity and success of the event. If granted, suspension of rules under this paragraph shall be indicated on the street use permit and does not require Common Council approval.
2. Special Approvals Process.
- a. Street Use Applicants seeking any of the approvals in sub. 1. shall so indicate on their street use permit application. Applications requesting special approvals for this first time are due ninety (90) days prior to the event start date. Applicants for events that have received prior approval under this section shall notify the Parks Division of their intent to repeat the event as soon as possible during the calendar year.
 - b. The Parks Division shall prepare each year, prior to the event season, one or more resolutions for the Common Council listing all known events for the calendar year seeking special approvals under this section and the type of approval(s) requested. (Events seeking approval under Sec. 9.13(6)(k)1.d. for the 700 or 800 block of State Street need not be included.) The resolution shall include sufficient details for the Council to consider the requested approvals, and additional details about first-time events if deemed necessary by Parks Division.
 - c. The Common Council shall consider the requested approvals not less than fourteen (14) days prior to the event start date. If license invalidation is requested under Sec. 9.13(6)(k)1.a., the applicant shall provide at least one (1) week's written notice of the Common Council meeting to the Street Vending Coordinator, any licensed street vendors (including merchant vendors and sidewalk cafes) with assigned sites in the event perimeter, and any Sec. 9.54 permit holders with assigned sites in the event perimeter. The notice shall include all of the details required for the resolution and information about participating in the event including fees. The Common Council may grant the approvals authorized in Sec. 9.13(6)(k)1.a., b., and c. after making a finding that the requested approval(s) are necessary to maintain the integrity, comprehensiveness and success of the special event. License invalidation shall not be approved unless the applicant also satisfactorily demonstrates and the Council finds that special conditions

exist warranting the exclusive vending rights. The Street Use Permit issued by the Street Use Staff Commission shall include a reference to the approvals granted by the Common Council.

3. Relocating Vendors Outside Event Perimeter. Whether or not invalidation of licenses under Sec. 9.13(6)(k)1.a. has been granted, the Street Vending Coordinator may relocate vendors or Sec. 9.54 permittees ("licensees") with assigned sites within the perimeter of a street use event to a location outside the event perimeter, to avoid interference with the event. Any such relocated sites shall be in addition to existing vending or Sec. 9.54 sites that have not been invalidated.

4. Prohibition Against Vending During Street Use Event.

- a. No person holding a Street Vending License of any kind may conduct the activities authorized by his/her license has been invalidated under Sec. 9.13(6)(k)1.b., or otherwise in violation of the special vending approvals granted under Sec. 9.13(6)(k)1. This prohibition does not apply to licensees who have been selected by the event sponsor to participate in the event, or relocated outside the perimeter of a street use event under sub. 3. above.
- b. No person shall conduct any street vending activity within the perimeter of a street use event unless the vendor is covered by the sponsor's special event vending license, or the vendor was selected by the sponsor to vend at the event using the vendor's existing street vending license as allowed in Sec. 9.13(2)."

4. Subsection (13) entitled "Exclusive Use/Permit Invalidation Procedures" of Section 9.54 entitled "Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending" of the Madison General Ordinances is amended to read as follows:

"(13) Exclusive Use/Permit Invalidation Procedures. T, E and M permits are subject to the exclusive use and invalidation procedures applicable to street vending licenses set forth in Sec. 9.13(6)(k). No person holding a T, E or M permit may conduct the activities authorized by that permit within the perimeter of a street use event if the permit has been invalidated under Sec. 9.13(6)(k). This prohibition shall not apply to T, E or M permit holders who have been selected by the event sponsor as a participant in the event and included on the event sponsor's Special Event Umbrella Vending License if required by Sec. 9.13(2)."

5. Paragraph 4. entitled "Duration of Permit" of Subdivision (b) entitled "Permit Review" of Subsection (5) entitled "Application Process and Permit Requirements" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is amended to read as follows:

"4. Duration of Permit. Each permit shall be valid for the dates and times stated therein. A separate permit shall be required for each separate event or street closure requested, ~~except that a single permit for Permits may be issued for a single day, multiple consecutive days, or single-day identical street closures for more than one occasion over the course of twelve (12) months or less may be considered and approved as a single permit, if the appropriate fee is paid under Sec. 10.056(7)(a) herein. Any deviation from the approved conditions on a permit for more than one occasion shall be approved by the Street Use Staff Commission by submitting an amended application following all the application procedures and deadlines herein ("Serial Events"). A Serial Event shall also be limited to not more than one (1) day per week and not more than fifteen (15) total days per year, except for the Dane County Farmers' Market.~~

6. Paragraph 6. entitled "Duration of Permit" of Subdivision (b) entitled "Permit Review" of Subsection (5) entitled "Application Process and Permit Requirements" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is created to read as follows:

"6. Changes to Approved Permit. The approved conditions for a street use event cannot be modified except by submitting an amended application for consideration by the Street Use Staff Commission, following all the application procedures and deadlines herein, and the permit may only be changed with the approval of the Commission, applying the same standards as for initial issuance of the permit."

7. Subdivision (a) entitled "Application Fee" of Subsection (7) entitled "Fees" of Section 10.056 entitled "Street Use Permit" of the Madison General Ordinances is amended to read as follows:

"(a) Application Fee. A nonrefundable application fee of fifty dollars (\$50) shall be submitted with an

application for each one-day event. If the application is for an event that requires street closure for two (2) or more consecutive days, the fee shall be one hundred dollars (\$100). If the application is for a Serial Event (as defined in Sec. 10.056(5)(b)4.) ~~single-day identical street closures for the same location for more than one occasion or event within a twelve (12) month period,~~ the application fee shall be one-hundred and fifty dollars (\$150). An additional twenty-five dollars (\$25) for each block or portion thereof in which any special vending approval under Sec. 9.13(6)(k)1. is requested shall be added to the application fee. The application fee includes the administrative costs of processing the application. For events in the 700-800 blocks of State Street and residential neighborhood events of not more than two (2) blocks, the fee shall also include minimal use of City equipment and services. However, additional fees for actual costs of services and equipment provided may be incurred for any event, under Par. (c) below.”

EDITOR’S NOTE: Sec. 9.13(6)(k) currently reads as follows:

“(k) Vending and Exclusive Vending Rights During Special Events.

1. Authority. During a special event the Common Council may by resolution suspend specifically enumerated vending ordinances or regulations on any street, alley, sidewalk or public square and on designated portions of the Mall/Concourse which are established pursuant to this Ordinance. Alternative rules and procedures may be established by the Common Council for the special event. This subdivision does not apply to special events which occur solely at the podium area of the 700 block of State Street or in the 800 block of State Street.
2. 700 and 800 Blocks of State Street. During a special event which is to be conducted solely within the podium area of the 700 block of State Street or anywhere in the 800 block of State Street, the Superintendent of Parks, or designee, upon written request of the event sponsor may approve the suspension of specifically enumerated vending ordinances or regulations in order to allow properly licensed participants in the special event to vend non-personally prepared food and non-handcrafted promotional items which promote the event and/or its sponsor in order to ensure the integrity and success of the special event. Upon any such approval, the Superintendent of Parks or designee shall provide written notice to the Director of Planning and Community and Economic Development or designee, prior to the issuance of any street use permit. Any approved suspension of ordinances or regulations pursuant to this paragraph. Any such approval shall be made a special provision of the street use permit issued pursuant to Sec. 10.056(4)(c) of the Madison General Ordinances.
3. Invalidation of Vending Licenses - “Exclusive Vending Use”. To encourage the integrity, comprehensiveness and success of a special event taking place on any street, alley, sidewalk or public square or on any part or all of the State Street Mall/Capitol Concourse, the Common Council may by resolution reserve up to ten (10) days during any vending year when street vending licenses will not be valid at a particular location and when some or all categories of Mall/Concourse vending or sidewalk cafe licenses will not be valid within the perimeter of a special event. Such action shall not be taken by the Common Council, however, unless the sponsor of the special event satisfactorily demonstrates that special conditions exist which warrant granting the exclusive vending rights. During any special event, the rules, guidelines and procedures as set forth in the resolution approved by the Common Council shall take precedence over any conflicting vending ordinance or regulation to the contrary.
4. Notice Procedure for Invalidation of Vending Licenses. For each such specific day during which certain or all street vending licenses or Mall/Concourse vending licenses have been declared to be not valid, the Common Council may by resolution authorize the sponsor of a special event to select vendors, salespersons and vending sites for the duration of the special event within its perimeter. The event sponsor shall provide written notice of the Common Council meeting date (s) at least one (1) week before the meeting, to the following: the Superintendent of Parks, or designee; the Director of Planning and Community and Economic Development or designee; and any vendor or sidewalk cafe licensee(s) on file with the Department of Planning and Community and Economic Development within the perimeter of the proposed special event area. The written notice shall contain an outline of the rules, regulations, fees, areas affected and a proposed resolution for exclusive vending rights. The determinations of the Common Council as to any specific day during which a street vending license or a Mall/Concourse

vending license will not be valid shall be by resolution adopted at least four (4) weeks in advance of such specific day. Street vending licenses and non-Mall/Concourse sidewalk cafe licenses shall be subject to invalidation for up to ten (10) days each vending year at any one location as provided in this subdivision. Any Mall/Concourse vending or sidewalk cafe license issued pursuant to Section 9.13(6) of the Madison General Ordinances shall be subject to invalidation for up to ten (10) days each vending year as provided in this subdivision. A fee of twenty-five dollars (\$25) for each block for which Exclusive Vending Rights is requested shall be charged.

5. Relocation For Other Special Events. Except in cases where Mall/Concourse vending licenses have been declared to be not valid by the Common Council pursuant to Paragraph 3. above, the Director of Planning and Community and Economic Development, or designee; or the Superintendent of Parks with the prior approval of the Director of Planning and Community and Economic Development; may relocate Mall/Concourse vending sites situated within the perimeter of a special event as necessary elsewhere on the Mall/Concourse so as to avoid interference with activities and equipment which are part of the special event. Any such relocated vending sites shall be in addition to existing vending sites on the Mall/Concourse.
6. Prohibition Against Vending During Special Event. No person holding a Mall/Concourse Vending License, a Sidewalk Cafe License or a Merchant Vendor License may sell or offer for sale any goods or food during a special event when his/her license is not valid."