

6-29-11 - THIS IS A DRAFT FOR DISCUSSION PURPOSES ONLY – THIS DOCUMENT DOES NOT REFLECT OFFICIAL OR PROPOSED POLICY OF THE CITY OF MADISON OR THE VENDING OVERSIGHT COMMITTEE. TO BE CONSIDERED BY THE COMMON COUNCIL, AN ORDINANCE MUST BE IN OFFICIAL FORMAT, SIGNED BY THE CITY ATTORNEY, SPONSORED BY AN ALDER OR MAYOR, & INTRODUCED THROUGH THE CITY CLERK.

DRAFT Ordinance for T-Permits (tables) and E-Permits (expressive vending) and sites.

(1) No person shall place, allow or set up a table, easel, case, crate, box, or any other equipment, display or articles of any kind on the sidewalk or sidewalk area, terrace, or street or highway right-of-way, except temporarily while actively loading or unloading said items, or unless a T-permit or E-permit has been issued under this section, or unless such equipment placement is otherwise authorized, by permit or other authorization, elsewhere in these Ordinances. *(this would exempt people with street vending permits, street use permits, occupancy permits, encroachment agreements, easements, etc. as well as those with a new T or E permit.)*

(2) Purpose and Findings. The sidewalks, sidewalk areas and terraces of the City of Madison are traditionally held for use by pedestrians and bicyclists in the ordinary way, and limited use for street vending, special events, and holders of encroachment permits. Due to the high volume of pedestrian traffic including students, workers, shoppers and tourists, the sidewalks of State Street and the Capitol Concourse and sidewalks adjoining property of the University of Wisconsin have been historically and traditionally used as a place for public expression, as well as sought-after locations for licensed street vendors, sidewalk cafes and merchant vendors as permitted by section 9.13, MGO. The City of Madison has developed a system of licenses for street vendors in the Mall/Concourse Area to preserve its interests as stated in MGO 9.13(6)(X) and has limited street vendor locations in the SE Campus Vending Area for the reasons stated in MGO 9.13(10).

The City finds that the unregulated placement of equipment on the sidewalks of the Mall/Concourse adversely affects the character and unique historical and business concerns of that area, impedes traffic and pedestrian safety, interferes with the City's ability to maintain unobstructed pedestrian walkways, is unfair to licensed city vendors who have competed for assigned street vending sites, and negatively affects the aesthetics of the permanent streetscape that has been carefully designed and maintained by the City.

The City also finds that unregulated placement of equipment on the sidewalks of the Southeast Campus Vending Area create a hazard for pedestrian and traffic safety due to the high volume of pedestrian traffic, and adversely affects the aesthetics of the streetscape which is designed primarily for efficient pedestrian movement and is largely free of obstructions.

The City also recognizes that persons not meeting the criteria for street vending licenses may wish to express a message, seek donations, hand out literature or sell expressive items from a location on the sidewalk using a table and other equipment. The City also recognizes that persons may wish to sell expressive items on foot in these areas.

The City finds that it can address its substantial interests in pedestrian and traffic safety and visual aesthetics by creating a system of assigned sites for the use of tables for expressive activities in the Mall/Concourse and Southeast Campus Vending Areas, and a permit for other areas of the City.

The City further finds that its interests in traffic safety, visual aesthetics, and in preserving unique business, tourist and historical concerns can be protected while permitting a limited number of stationary and mobile vendors to sell expressive items from assigned sites or on foot in these areas, with a permit. Therefore, this ordinance is adopted to create reasonable time, place and manner restrictions on placement and use of equipment on city sidewalks for expressive, free-speech purposes.

(3) **Table Permits “T Sites” in the State Street Mall/Capitol Concourse Vending Area and Southeast Campus Vending Area. (and maybe HDV areas – to discuss)**

- (a) **“T” Sites.** The Vending Coordinator shall establish no fewer than ten (10) daily “T” sites within the State Street Mall/Capitol Concourse Vending area and no fewer than three (3) daily “T” sites in the Southeast Campus Vending Area, for the purposes described in paragraph (b), and establish additional Saturday-only sites in both areas. T-sites shall be indicated on an official map maintained in the Office of Business Resources for such purposes. T sites shall be either 4 feet by 4 feet or 4 feet by 8 feet and shall meet all requirements for equipment placement found in MGO sec. 9.13(4). A group or individual must hold a valid T-site permit to be eligible for a T site assignment.

The “T” sites are not vending sites - no selling is allowed – so I am not recommending that the T site locations be approved by the VOC.

- (b) **Activities permitted in a “T” Site.** A T-permit holder may display and disseminate information such as literature or pamphlets about political, philosophical, religious, ideological or other noncommercial messages or causes, petition for signatures or seek donations for the same, in a T-Site. Sales or street vending, as defined in section 9.13(1), are strictly prohibited in a T-Site. Permittees may accept donations in exchange for non-food items of nominal value, but no minimum donation shall be required. The Permittee may limit the number of items given away to one (1) per person, per day. T-sites shall not be used for performances of any kind or preparation of on-site artwork, and no sound amplification is permitted.
- (c) **Equipment permitted in a T Site:** One table of sturdy construction that fits within the perimeter of the T-site, one chair in a 4x4-foot site or two chairs in a 4x8-sites, and not more than one (1) container that fits entirely beneath the table, for storage purposes.

No electricity, no amplification, no umbrellas, no attention-getting devices, no signage except one 8 ½ x 11 inch sign, securely fastened to the table, identifying the Permittee or its cause.

A T-site must be attended by the holder of a T-permit at all times.

- (d) T-site permit application, fee, insurance.
(e) T-site assignment procedure – first come first served, lottery, computer calendar?
(f) T-site revocation procedure – same as for street vendors? (see 9.13(8)).

Possible Mall/concourse T-site or E-site locations (will be on map – not in ordinance):

Ask Warren for his recommendations. also confer with Parks and Mall Maintenance.

Should there also be T-sites in the other HDV areas or Game Day area?

(4) **“E” Sites – Table Sites Including Expressive Vending – in the State Street Mall/Capitol Concourse and SE Campus Vending Areas. (maybe HDV?)**

- (a) **“E” Sites.** The Vending Oversight Committee (VOC) shall establish no fewer than four (4) daily “E” sites within the State Street Mall/Capitol Concourse Vending area, no fewer than two (2) daily “E” sites in the Southeast Campus Vending Area, and additional Saturday-only sites in both areas, for the purposes described in paragraph (b) below which may include the vending of expressive items. E-sites shall be indicated on an official map maintained in the Office of Business Resources for such purposes. E sites shall be either 4 feet by 4 feet or 4 feet by 8 feet and shall meet all requirements for equipment placement found in MGO sec. 9.13(4). A group or individual must hold a valid E-site permit to be eligible for a E-site assignment.

Because E-sites will have some vending and be located in the Mall/Concourse vending area, I am suggesting that those sites could be approved by the VOC - although the VOC may wish to delegate that function to Warren as well. The ordinance would establish a minimum number of sites.

- (b) **Activities permitted in an “E” Site.** An E-site permit holder may participate in all of the activities permitted with a “T” permit, plus vending (sales) of non-food **expressive items** only in an E site. An “expressive item” is defined as an item that is inextricably intertwined with a political, philosophical, religious, ideological or other noncommercial message or cause. Examples of expressive items that may be sold in an E site include pamphlets, newspapers or other publications; DVDs or other recordings; and bumper stickers, buttons, pins, patches, posters or signs displaying a written noncommercial message. An item is not considered inextricably intertwined with a noncommercial message if the item has an independent function or utility despite the inclusion of the message. Items of apparel such as hats or T-shirts are deemed to have independent utility as clothing, therefore no items of apparel or clothing, including hats or T-shirts, shall be sold from an E site in the Mall/Concourse Vending Area regardless of the message contained thereon.

Works of original art, including photography, original books and musical recordings of an artist/vendor may be sold from an E-site located in the Mall/Concourse Vending Area but only if the permit holder also holds a valid Arts and Crafts Vending License under MGO 9.13(6)... *(this is to try and distinguish First Amendment protected E-sales from sales by artists who are trying to earn some income from the sales of their artwork. Those vendors currently pay a premium for their vending site.)* An E-site may not be used for performances or to prepare artwork.

- (d) E-site permit application, fee, insurance.
(e) E-site assignment procedure – first come first served, lottery, computer calendar?
(f) E-site revocation procedure – same as for street vendors? (see 9.13(8)).
(g) should there also be E-sites in the HDV or proposed “Game Day” area?

MOBILE E-SITE / VENDING OF EXPRESSIVE ITEMS ON-FOOT:

- (5) **E-Permit for Mobile Sales of expressive speech items in the Mall/Concourse and SE Campus Vending Areas** - For on-foot sales of expressive items, with limited or no equipment and no table. Make same as an E-Permit but mobile, no table, no site. Must meet same criteria for what can be sold in an E-site.

How many? Should there be a maximum number on the mall/concourse?

If so, should there be additional licenses released during an “election campaign period” when more button sellers come out?

Some possible restrictions: no equipment placement, no noise violations, stay certain distance from occupied vending sites, T-sites and E-sites,,,

(there is no need for a mobile T-site permit because people can currently do expressive activities on foot, without equipment, without any permit.)

- (6) **CITY-WIDE MOBILE VENDING WITHOUT ANY EQUIPMENT**

Currently - a basic street vendor license under 9.13(3) would authorize these activities outside the mall/concourse and other regulated areas, no change is needed.

CITY-WIDE TABLING / T-SITE AND E-SITE ACTIVITIES WITH EQUIPMENT:

(7) Citywide Tabling-

- (a) **City-wide “T” site and “E” site Permits.** The holder of a T-site or E-site permit may use the equipment and conduct the activities authorized by those permits in locations outside of the State Street Mall/Capitol Concourse and Southeast Campus Vending Areas, without reserving a site. (in other words: A holder of a “T” or “E” Site permit may set up in any location that a holder of a Basic (city-wide) street vending license is authorized to be, under MGO 9.13(4).)

(this is because there are no restrictions on what kind of items can be sold outside the mall/concourse, SE Campus, or HDV areas.)

(discuss whether this should be a separate permit or whether city-wide “T” and “E” activities should just be authorized with a basic street vendor license. Depends on what the price will be for a T-permit or E-permit as compared to the price of a Basic/city-wide street vending license.)

EXCLUSIVE USE / INVALIDATION PROCEDURES – SHOULD APPLY TO ALL

- (8) Exclusive Use / Invalidation procedure for special events should apply to T-sites and E-sites and T and E permit-holders, within the confines of the special event.

Discuss whether council approval should still be required.

Kelli / Parks would like to streamline the exclusive use procedure so that regular /repeat events do not have to go to the council every year.

MISCELLANEOUS

There will be some other city ordinances that need to be amended or cleaned up to be consistent with these new permits.

Drafted by Lara Mainella, Assistant City Attorney, for discussion purposes only. 6/21/11.

This draft document does not reflect the official or proposed policy of the City of Madison or the Vending Oversight Committee.