

Amendments to the Regulations Governing Street Vending on the State Street Mall/Capitol Concourse regarding the Fall Food Cart Review process

- (1) **Increase the length of time of the food cart review period from 2 weeks to 4 weeks and clarify the demerit points for failure to show up for a review day:**

III.

- C. Fall Food Vending Review. All applicants for Mall/Concourse Food Vendor licenses, including returning Mall/Concourse food vendors, shall be required to participate in an annual Food Vending Review. The Food Vending Review shall be conducted every year ~~during~~ over a four-week period, beginning on the Monday of the last week of September and continuing for a total of 4 weeks. through and the first week of October. During these weeks, reviews may take place on Monday through Friday between 11:00 a.m. and 2:00 p.m., and on Saturday between 8:00 a.m. and 12:00 p.m. In the event of severe weather, specific review days may be rescheduled upon notice to all participants. Returning food vendors will be reviewed in their regular sites during their regular business hours. New applicants will be assigned a site by the Street Vending Coordinator for review on a not less than two (2) designated Saturday(s) as determined by the Street Vending Coordinator. ~~New applicants may not be open for business to the regular public during this time.~~

Demerit points for missing review days: Participants will be penalized for missing assigned days of the Food Cart Review as follows:

- Existing Monday-Friday vendors will be allowed a grace period of 2 days and will be penalized 1 demerit point for each review day missed in excess of 2 days.
- Existing Saturday vendors: will be allowed a 1-day grace period and penalized 1 demerit point for each Saturday missed in excess of 1 day.
- New applicants: no grace period, 1 demerit point for each assigned day missed.

~~from their total Fall Food Cart Review score for missing any day of the assigned days of the Food Cart Review.~~

- (2) **Change the requirements for health licensing so that first time vendors have all necessary food and drink permits before participating in the review. This is required so they can sell to the general public. Also change the period of time for counting demerit points to Sept 1 – August 31 prior to the review:**

III. C.

1. The Fall Food Vending Review shall be open to all new applicants and currently licensed food vendors, otherwise eligible under ss. 9.13(6)(i)2.a. and 9.13(8)(a), who have ~~obtained and passed a preliminary inspection as~~ all necessary food and drink inspections, licenses and permits required by Public Health-Madison and Dane County (“PHMDC”), have committed no significant health violations (defined in sub. 2. below) and received not more than two (2) vending citations or complaints within the period of September 1- August 31 immediately preceding the review. ~~the past twelve (12) months preceding the review date.~~ "Complaint" for purposes of this section shall mean a civil prosecution for an ordinance or regulation violation initiated by complaint under sec. 800.02, Wis. Stats.

Required Health Department licensing: Returning and first time participants shall obtain all necessary inspections, licenses and/or permits for a mobile food cart from Public Health-Madison and Dane County no later than five (5) business days prior to the first day of the review. The applicant is responsible for arranging all necessary inspections with PHMDC.

2. A “significant health violation” shall mean any violation of safe food storage and handling ordinances or regulations which resulted in the issuance of one (1) or more citation(s) or complaint(s) ~~within 12 months~~ between September 1 and August 31 immediately prior to the review date; including but not limited to: violations of Chapter 7 of the Madison General Ordinances, selling non-personally prepared food contrary to Sec. 9.13(6)(b); and permitting an unauthorized person to vend food contrary to Sec. 9.13(4)(p).

IV. FOOD VENDING REVIEW JUDGING GUIDELINES AND SITE ASSIGNMENT CRITERIA

- A. Initial Application Review. The Director of Planning and Development, or designee shall review all applications for completeness and for compliance with cart specifications; equipment standards; electrical needs and standards; insurance; and vendor and menu restrictions. Applications shall also include proof that the ~~vendor has passed preliminary inspection(s) as required by the City of Madison Department of Health, however possession of applicant has obtained from PHMDC all required food and drink license(s) or permit(s) necessary to operate a mobile food cart is not required to participate in the review in accordance with Paragraphs 1 and 2 below, as well as PHMDC approval of the base kitchen and cart is required to serve food to reviewers or offer food for sale during the review period.~~ by the Public Health Department. The Director of Planning and Development, or designee shall promptly notify the applicant of his/her seniority points, violation demerit points and any deviations from or failure to meet the aforementioned specifications, standards and restrictions. Such notice shall be given in writing at least fourteen (14) days before the scheduled Food Review and shall advise the applicant of the limited right of appeal set forth in Section V.G. below.
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V.H.

- H. Food vendors assigned a site ~~in the Fall Food Vendor Cart Review~~ shall submit to required inspections by ~~the Department of Health~~ Public Health-Madison and Dane County and shall obtain all food and drink permit(s) or license(s) required by law, in addition to all vending permits required under sec. 9.13(6) and herein, prior to participating the Fall Food Cart Review and prior to commencing any food vending activity from the cart.

- (3) Reduce maximum number of seniority points from 7 years to 5 years and change the method by which seniority is applied to the final score:**

IV. A.

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1. Seniority. Seniority points are determined by the number of vending seasons that the vendor has purchased and used a Mall/Concourse Food Vendor License (of any duration) counting backwards from the present, up to a maximum of five (5) ~~seven (7)~~ years. Seniority is not transferrable.

How to calculate Seniority for Mall/Concourse Food Vendors:

Not purchasing the license, forfeiting a site assignment or forfeiting the license for the vending season, or failing to vend at all during the vending season will count as a year off. However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season) without losing seniority, but that year will not be counted toward that vendor's total years of seniority. If a vendor takes two (2) sabbaticals in a three (3) year period, 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.

In addition, a Mall-Concourse Food Vendor will lose all years of seniority if all of the four following changes occur during the same vending season:

- The name of the food cart or food tent, as specified on the application and resulting license, has changed.
- The owner of the food cart or food tent, as specified in the application and resulting license, has changed.
- A change in the overall design and appearance of the food cart or food tent (other than changes resulting from maintenance or repairs.)
- The menu has changed. (This does not include a “minor menu change” for which approval has been granted under sec. XII.D. This also does not include a menu change that is approved through the Food Cart Review process, unless that change is also accompanied by a change in all of the other factors listed in this section.)

Tie Breaker. Seniority may be used as a Food Cart Review scoring tiebreaker. If more than one Mall/Concourse Food Vendor share the same number of years of seniority, rank order will be determined by the date and time of day the license is created, or by a coin toss conducted by the Vending Coordinator or designee if the date and time of the license is not available.

2. Violations/ Demerit Points.

Citations/Ordinance Violations: Violation demerit points are determined by calculating the total number of violations by the vendor of sec. 9.13, the regulations adopted therein, or the other ordinance violations listed in Sec. 9.13(8)(a) Madison General Ordinances issued to the applicant between ~~July~~ September 1 of the previous year to ~~June 30~~ August 31 of the year the Review is held. Each such violation considered shall be documented by a citation/civil complaint.

Other Violations/Demerit Points:

- Missing any day of the Food Cart Review as described in sec. III.C.
- Failure to vend or discontinuance of any item listed on the application or a substantial change in vending presentation where a vendor's past rating was based in whole or in part on the quality and uniqueness of the item(s) either not sold or discontinued or on the quality or uniqueness of the vending presentation either abandoned or substantially changed. Such material change shall be grounds for suspension of the Mall/Concourse Vending License. Any applicant for license renewal who shall have been suspended for such reason during the previous vending year shall be penalized twenty (20) demerit points in the next food review process.
- Additionally, five (5) demerit points will be assessed for any of the following:
 - if a vendor has had his/her **vending cart or mobile base kitchen ordered by the public health department to suspend or cease all operations** for seven (7) or more consecutive days in the previous vending season.
 - if a vendor has had his/her **food and drink permit suspended or revoked** for a period of seven (7) or more consecutive days during the previous vending season.

(4) Clarify how Review Panel members are appointed and add a training requirement:

IV.

- B. Review Panel. The Food Vending Review Panel ("Review Panel") shall be recommended by the Street Vending Coordinator and appointed by the Chairperson of the VOC and shall consist of not less than twelve (12) members not fewer than fifteen (15) people, at least one (1) of whom shall be a member of the VOC, except that Non-Voting Technical Advisors who are currently licensed as a Food Vendor or participating in the Fall Food Cart Review are not eligible. Panel members shall represent a diverse and varied cross section of the community. Panel members shall have term limits of five (5) years. The Review Panel shall review returning and new applicants for food vending licenses using the criteria and specific scoring system described in these Regulations.

Training for Review Panel: Each year, prior to reviewing any food carts, the Review Panel members shall attend a training session provided by the City, which shall include but not be limited to the following topics: the criteria in Appendix A (see below), rules for conducting the review, when and how to order, the importance of tasting food while it's fresh, how to judge the food including information to guide reviewers in assigning scores based on taste, presentation, appearance; how to judge the apparatus and equipment. The City shall consult members of the food industry and other industry professionals for input in designing the training curriculum.

- C. General Review Criteria. The Review Panel shall consider the degree and manner the applicant's apparatus and products enhance the purposes of the Mall/Concourse as set forth in 9.13 of the Madison General Ordinances and regulations adopted pursuant thereto. Reviewers shall consider specific criteria designed to further these purposes, set forth in Appendix A B – “Food Vending Review Score Sheet Criteria,” which may be updated by the Street Vending Coordinator with input from food industry professionals but consistent with the requirements of these Regulations; including but not limited to the overall integrity of the operation, quality and uniqueness of menu items, food presentation, cleanliness and maintenance, and originality and aesthetic appeal of the cart or apparatus design and accompanying signage.
- D. Scoring System. The Review Panel shall rate and score food and cart/ apparatus presentation using a rating of 100 possible points, with 100 being the best possible score. The reviewers shall use a score sheet (~~Appendix A~~) to award points as follows:
1. Food Category - zero to forty (0-40) points.
 2. Cart/Apparatus Category - zero to forty (0-40) points.
 3. Originality Category - zero to twenty (0-20) points.

The criteria for awarding points in each category shall be provided to the reviewers as set forth in Appendix-~~B~~A. Reviewers shall assign points in each of the above three categories and combine them for a total score for each applicant vendor reviewed.

(5) Changes to scoring methods, preparation of final Rank Ordered list, waiting list, and appeals process:

IV.

E. Final Score Tabulation.

1. Score Sheets. Each review panelist must evaluate at least 80% of the applicant vendors ~~on the score sheet (Appendix A) in order for the scores on their score sheet that reviewer's scores to be included. considered in the Final Score Tabulation.~~ Reviewers shall use a score sheet created by the Street Vending Coordinator for this purpose.

2. Raw Average Score. From those score sheets, the Director of the Department of Planning and Development, or designee, shall compute the average score for each applicant vendor, ~~discarding. In computing the average score, the designee shall not include~~ the highest and lowest score for each applicant.

~~The designee shall add to the average score one (1) point for each year of an applicant's seniority (calculated under sec. IV.A.1.), with a maximum of seven (7) seniority points.~~

3. Demerit Points and Adjusted Average Score. The designee shall then subtract any demerit or violation points calculated under sec. IV.A.2. to arrive at a ~~final~~ an adjusted average score.

4. Ranking List Step 1. A list from highest to lowest adjusted average scores shall be created corresponding to the number of Mall/Concourse Food Vending sites available (see example below.) Applicants must have an adjusted average score of at least seventy (70) points to be included on this list and proceed to Step 2 (final ranking process). Any eligible applicants that do not make this first list shall be placed on a waiting list.

Example:

If there are 40 total Mall/Concourse Food Vending sites available, and 50 applicants participate in the Food Review and received a score of 70 or higher, only the top 40 scoring applicants at this stage are eligible to proceed to final ranking for a site assignment.

5. Ranking List Step 2: Seniority and Final Rank Ordered List. The designee shall ~~add any seniority points to the adjusted average score of those applicants who made the list in Step 1 to create the final rank-ordered list, as follows: one (1) point for each year of an applicant's seniority (calculated under sec. IV.A.1.), with a maximum of five (5) seniority points per vendor. The designee shall use this final score to establish a final rank-ordered list for use in the final site assignment process. Applicants will be offered a site according to their rank based upon first, second and third-choice site preferences listed by the applicant on their Application form. for Mall/Concourse Food Vendor form. Applicants receiving a final score of seventy (70) or more points, including seniority and demerit points, will be eligible to be assigned a site.~~

6. Waiting List. Those eligible applicants who did not make the list in Step 1 shall be placed on a waiting list in the order of their adjusted average score. If an site opening occurs, the Vending Coordinator will offer the site to existing vendors on the Final Rank Ordered List, according to their rank, using procedures established elsewhere in these Regulations. If no vendors on the Final Rank Ordered List accept the site, the site will be offered to those on the waiting list. No seniority points will be added to applicants on the waiting list, rank order for waiting list purposes shall be based on the adjusted average score in Step 1.

V. FOOD VENDOR SITE ASSIGNMENT

A. Initial Site Assignment Based on Food Cart Review. The Director of the Department of Planning and Development, or designee, shall assign food vending sites beginning with the highest-scoring vendor on the Final Rank Ordered List assigned to his/her first preference, and the next highest-scoring vendor assigned to his/her first preference, or if that site has already been assigned, his/her next highest-preference, and so on; until all sites are filled. 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 vendors 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. ~~Once all sites have been assigned, any remaining applicants will be placed onto a rank ordered waiting list and may be assigned a site if a site is forfeited, relinquished, created, or otherwise becomes available, using the applicable procedures below.~~

- B. Applicant Notification and Acceptance of Site. The Director of Planning and Development, or designee, shall establish and post with the City Clerk the Final Rank Ordered List, a list of site assignments, ~~plus a rank-ordered~~ and the waiting list (if any) of those applicants remaining from Step 1, within ten (10) business days of the last day of ~~by the day after the next regular meeting of the VOC immediately following~~ the Fall Food Review. The departmental designee shall notify the applicants by mailing (electronically or on paper) such list to all food vendor applicants within three (3) working days of the posting of the list. Written acceptance of the site assignment is required before a license can be issued.

Failure to accept the assigned site or appeal the score on the limited basis set forth in Section V.G. in writing within ten (10) calendar days of the date of the notice, shall be deemed a forfeiture of the vending site. Failure to obtain all required licenses by April 15 shall be deemed a forfeiture of the vending site.

Written acceptance (paper or electronic) of the site assignment is required before a license can be issued.

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- E. Filling Vacant or New Sites During the Vending Season. When an assigned site is forfeited, relinquished, created, or otherwise becomes permanently vacant during the vending season, (April 15-April 14) the departmental designee shall inform all currently licensed Food Vendors of the vacancy. The responding food vendor with the highest score on the Final Rank Ordered List from the previous food cart review shall be assigned the site for the remainder of the vending season. Any subsequently vacated site shall be assigned using the same process until all food vending sites are filled. If vacant site(s) remain after this process, the departmental designee may offer the site to applicants on the waiting list according to their ~~rank order~~ position on the waiting list or, on November 1 or later, to a new food vendor who has completed the Fall Food Cart Review and qualified for a license, as described below.

Procedure to fill vacant or new food vending sites during vending season: If a food vending site is or becomes vacant (as defined in Sec. III.E.) any time during the vending season, the site shall be offered to currently-licensed food vendors or waiting list applicants under the procedures in Paragraph E. above. Beginning November 1 or later, if no such vendors are interested in the vacant site, the site may be offered to a first-time Mall/Concourse Food Vendor applicant who successfully completed the Fall Food Cart review and received a site assignment for the next vending season. The new vendor may be assigned to the vacant site and begin daily vending from that site on November 1 or later. New vendors wishing to use this option must purchase all necessary vending licenses for the

current season. The Mall/Concourse Food Vending license fee shall be prorated as set forth in Sec. 9.13(6)(h)3.a., MGO.

See Section III.D. for filling sites that remain unassigned after the Fall Food Review, for the upcoming vending season.

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- G. An applicant may appeal to the VOC from the determination of the Director of Planning and Development, or designee, made pursuant to Section IV.A., D., or E. above solely on the grounds of food review score computation error, error in measurement or in the calculation of the applicant's seniority or number of demerits or violations, provided that such appeal must be made prior to site assignment. Appeals shall be made in writing to the departmental designee who shall review the alleged error and if the designee and applicant agree on a solution, the designee shall correct the error and issue a revised Final Rank Ordered list and waiting list (if any.) If the parties cannot agree, the designee shall notify the Chairperson of the VOC to place the appeal on the next agenda of the next available VOC meeting, observing the City's applicable agenda deadlines. The VOC shall consider the appeal under the grounds stated in Section V.G. and if VOC finds an error under Section V.G. the Final Rank Ordered list and waiting lists shall be adjusted accordingly. Final Site assignments (after adjustment pursuant to any successful Sec. V.G. appeal to the VOC) ~~once made by the VOC~~ shall be final and not subject to review or appeal under chapter 9 of the Madison General Ordinances or under these regulations.