

ID# 11414

Report and Recommendation of the Vending Oversight Committee on the matter of the Hearing to Suspend/Revoke the Street Vending License of Jeffrey Okafo, based on a "Notice to Suspend/Revoke Vending License" dated July 9, 2008.

A hearing was held before the VOC on July 30, 2008 pursuant to the VOC's Rules of Procedure for Quasi-Judicial Hearings under Section 9.13, Madison General Ordinances," established by the Vending Oversight Committee on 09/24/03. The following report is taken directly from the minutes of the VOC which were approved at the VOC's regularly monthly meeting on August 27, 2008 (ID# 11414):

A. Opening Remarks and Explanation by Chairperson

1. VOC Chair Foxgrover called the hearing to order at 5:44 p.m. with a quorum present. Ald. Thuy Pham-Remele arrived at 6:12 p.m.
2. Foxgrover asked VOC staff if the hearing had been properly noticed. Street Vending Coordinator and executive secretary to the VOC Warren Hansen confirmed that it had been.
3. Foxgrover asked if all parties were present.
The vendor Jeffrey Okafo: Yes. The City of Madison represented by Assistant City Attorney Lara Mainella: Yes. VOC Chair Karen Foxgrover: Yes. VOC Vice Chair Rosemary Lee: Yes. VOC member Matt Rockwell: Yes. VOC Member Ald. Michael Verveer: Yes. Street Vending Coordinator Warren Hansen, who would keep accurate records of the proceeding and tape record all testimony: Yes.
4. Foxgrover explained the purpose of the hearing, which would include:
 - a. That proceedings before the VOC are governed by ordinance 9.13 and the Regulations adopted thereto, and any rules or procedures adopted by the VOC.
 - b. That she recite the charges or allegations or read from the documents(s) that commenced the proceeding in question (See ID number 11414 and the two attachments for full text recited by Foxgrover.).
 - c. She explained that the VOC's role was to sit as a quasi-judicial body, listen to the evidence, and make a decision. She described the decision-making options based upon the type of proceeding that had been commenced.

B. Outline of the Sequence of Proceeding

1. Opening remarks by the Parties:
 - a. Mainella made a summary of the history that had led to this hearing, emphasizing that sec. 9.13 (8)(a) (Procedure for Revocation, Suspension or Nonrenewal of Vending Licenses... "serious or repeated violations of Chapter 12 restrictions on parking, stopping or standing"... and "if a licensee has committed three (3) or more violations described above within twelve (12) months") made the hearing mandatory. She mentioned that there would be two witnesses for the City, Police Officer Brain Chaney and Stephanie Neisen.
 - b. Okafo stated that he felt that the hearing was inappropriate because two of the three reasons for the hearing listed on the Notice of Hearing related to cases that were still being adjudicated in court and on which no final judgment had been made, and that

the third reason pertained to his personal parking tickets, which he felt had no bearing on his street vending business.

2. City Witnesses

(1) Direct Examination

The first witness was Stephanie Neisen, Parking Enforcement Leadworker. She was sworn in by Foxgrover. Neisen explained some enforcement procedures, saying that her staff's enforcement pertained only to on-street parking violations and parking meters. She was aware of the Jin's Chicken and Fish food cart. She had first become aware of the cart in 2002-2003 as a meter walker and had observed Jin's being parked in places that it should not have been parked, at places other than meters. She recalled at least three parking citations for the cart and three for the truck that towed it within the previous two months leading up to the hearing. She recalled that one or the other vehicle had received parking citations "quite often", perhaps once or twice a week. She was aware of many complaints from the Parking Utility staff about Jin's. Parking enforcement staff were rotated every two weeks, she said. She also commented that other vendors are not chronically ticketed, that they tended to do as staff directed them to do.

Mainella distributed Exhibit One, a group of summaries of six of Okafo's expired meter and "overtime" parking tickets. (Overtime tickets are written when a vehicle remains in the same place for more than two hours with paid meter fees.)

Mainella distributed Exhibit Two, a group of summaries of twenty-three expired meter and "over-time tickets". Okafo's vehicle registration had been suspended since 2005. Mainella distributed Exhibit Three, a Madison Police Department record of impoundment of Okafo's vehicle. There was a written account of Okafo's uncooperative behavior, including physical violence on his part. Ms. Neisen added that vehicles were impounded once the owner had amassed \$250 or more in unpaid fines.

Mainella distributed Exhibit Four, a Circuit Court Criminal Complaint accusing Okafo of Resisting An Officer.

Mainella distributed Exhibit Five, a Madison Police Department Report, describing Okafo's arrest for Disorderly Conduct, Obstructing a Peace Officer, and Resisting a Peace Officer.

Mainella distributed Exhibit Six, a Madison Police Department Report which cited the offense as Okafo being an Arrested Person/Disorderly Conduct.

Mainella distributed Exhibit Seven, a Circuit Court Criminal Complaint with one count: Operate Motor Vehicle After Revocation - 4th and Subsequent Offense.

Mainella Distributed Exhibit Eight, a court docket for an arrangement for Okafo to pay off his tickets on a budget and at a reduced price. Mainella stated that Okafo was still in the process of paying them off.

b. Cross Examination

Okafo referred to the truck loading zone sign that had been installed on the west side of N. Frances Street to prevent food vendors from doing business there. This had forced him to do business on the more residential/private sector business side of the street. He said that parking ramp staff had complained about the smell of food. Mainella pointed out that the City was not referring to that sign. Okafo felt that there had been harassment toward him by parking enforcement personnel.

c. Opportunity for follow-up questions by vendor

There were none.

d. Questions from committee

Verveer asked which time period was being covered. Mainella said that it was the previous twelve-month period. Verveer asked about the location of the parking tickets

included in the exhibits. Neisen replied that they were from the 400 block of N. Frances Street only, but that there may have been other violations elsewhere. Verveer had no further questions.

(1.) Direct Examination (Continued)

a. Foxgrover swore in Madison Police Officer Brian Chaney.

Mainella questioned Chaney, who provided an overview of the circumstances leading up to Okafo's behavior with regard to parking enforcement officer Dominic Stephenson and to Chaney. Chaney had been called to the scene and had intervened between Okafo and Stephenson. Okafo made verbal threats and had to be physically restrained. Okafo interjected that he felt it was inappropriate to discuss this matter before it had gone through a court of law. He registered an objection.

Chaney continued, saying that he felt that it had appeared to him that Okafo had wanted to do him harm. Mainella asked Chaney if his police report (Exhibit 5) accurately described the incident, he said, "Yes." Mainella asked Chaney if he reviewed Parking Enforcement Officer Stephenson's report and whether it was accurate to his knowledge. Chaney said, "Yes."

b. Okafo would not cross-examine Chaney.

c. Okafo had no follow-up questions.

d. There were no questions from the committee. Chaney stepped down.

(1.) Direct Examination (Continued)

a. Foxgrover swore in Jeffrey Okafo. Mainella's questions yielded the following answers:

He had been in possession of two tow vehicles which were both Dodge trucks and he said that their respective registrations had gotten "mixed up." He has been paying off University of Wisconsin and City of Madison tickets. He did have knowledge of 9.13 (8)(a) which specifically referred to Chapter 12 parking restrictions. Okafo asked why he had not been notified of his situation after he had received two parking violations.

b. There was no cross-examination.

c. There were no follow-up questions by Okafo.

d. There were more comments from the committee about Okafo's testimony as well as questions, as follows:

Rockwell pointed out that the Jin's business had once been owned by Okafo's now deceased mother (Maxine Okafo), but that he had a Street Vendor License in his own name. Okafo said that he was trying to take over the ownership himself but had done nothing to change the status of the business since his mother had passed away. Lee felt that it would be inappropriate to inform Okafo of the circumstances that might follow once he had been cited three times. She felt that Okafo should read any information distributed by Hansen and that Okafo himself was responsible for paying attention to the number of tickets he received, that there was a penalty for not paying fines. Mainella asked Hansen if he had distributed copies of Ordinance 9.13. Hansen replied that this had become far less common because the ordinance was available on the street vending website. Verveer referred back to the 2004 Okafo Hearing that had been precipitated by similar circumstances and had led to the thirty-day suspension of Okafo's Street Vendor License. At that time, Maxine Okafo had continued to operate the Jin's cart although Jeffrey Okafo's Street Vendor license had been suspended. Now, Verveer continued, if Okafo's license was suspended, the Jin's cart would be unable to operate unless Okafo hired others to operate it for him during the anticipated period of suspension. Verveer was aware that Okafo had had several vending-educational conversations with Hansen's assistant, Street Vending Monitor Charles Rogers. Okafo

confirmed this, adding that he felt that the conversations had been beneficial and that he had followed Rogers' instructions.

Mainella observed that the committee was straying from the topic.

Hansen asked for permission to clarify some things and was given permission to do so. He said that neither he nor his assistant had the authority to write parking tickets and that he never had conversations about parking tickets with vendors because he rarely knew who was being written them. Mainella agreed that Hansen did not have a direct connection with the status of any vendor's parking tickets unless someone in the know informed him. Hansen added that some late night vendors, like Okafo, were not licensed as Mall/Concourse Food Vendors, a juried and more highly regulated system in which he worked much more closely with all Mall/Concourse Food Vendors and whose applications required his signature of approval before licensing could occur. Hansen added that, although he and the City-County Health department kept each other informed about new food vendor inquiries, the non-Mall/Concourse food vendor applications, like Okafo's, did not require Hansen's signature, and that his relationship with non-Mall/Concourse Food Vendors was less substantial.

After the fact, Foxgrover decided to swear in Hansen.

Lee then summarized the discussion about an agenda item on the previous VOC agenda, in which the 400 block of N. Frances Street had been considered for elimination as a late night food vending location. She recalled that the VOC had rejected this notion, partially in support of Jin's. Hansen agreed with her synopsis.

3. The vendor (Okafo) had no witnesses.

4. There were no rebuttal witnesses.

5. Closing remarks

City: Mainella's closing remarks were succinct, telling the committee to focus on the three reasons for this action: Serious or repeated violations of Chapter 12 (Parking), other violations substantially related to vending (Resisting an Officer and Disorderly Conduct), and three or more citations within a twelve-month period.

Plaintiff: Okafo made a brief general summary of what he had already said and referred again to his pending court cases.

Mainella said that the issue was that he had far more than the three violations, collecting more like thirty.

Okafo asked why he should have to pay twice, paying both the parking tickets and also possibly having his license suspended. He felt that his circumstances were based on selective enforcement. He felt that it was inappropriate for people to lose their jobs because of parking tickets.

C. Additional Rules for the Hearing.

Foxgrover had read this list of rules aloud at the outset of the hearing.

D. Deliberations and Decision-making.

There was brief discussion about perhaps making some alterations to the procedure but the committee finally decided to follow the standing procedure.

All agreed to take a five-minute break.

1. Fact-Finding Phase.

Rockwell said that Okafo had made some good points. Rockwell added that it would only be fair that the consequences of arrests and too many parking tickets would have to apply to every vendor in every situation. He felt that only the tickets applied to the food cart itself were relevant. Verveer asked if Rockwell felt that way because the court cases had not been adjudicated. Rockwell replied that if someone was arrested in Las Vegas it would have no bearing on the sandwich he's selling in Madison. Verveer asked if Rockwell meant if the vendor were arrested at a time apart from vending activity. Rockwell answered in the affirmative, that the VOC looked at vending licensing. He added that it was "silly" to get so many parking tickets.

Lee said that she was disturbed by Okafo's confrontational behavior toward parking and law enforcement personnel.

Pham-Remmele said that people who were serving the public as vendors should do so with self-control. She said that it upset her that Okafo resisted officers and used bad language. She said that it was as though he felt that he was above the law. She said that he had a poor attitude about ignoring the tickets. She felt reluctant about allowing Okafo to continue dealing with the public, who should be safe with him under any circumstances.

Rockwell said that Okafo would go to court because of these incidents and will eventually pay all of the tickets. Rockwell felt that it was the VOC's role to look at licenses, not at specific vendor personalities such as Okafo's.

Lee said that Okafo's violations were based on not adequately fulfilling his responsibilities as a licensed vendor and that the VOC would consider the same circumstances for any vendor.

Rockwell, who is married to a Mall/Concourse Food Vendor, suggested that he should perhaps recuse himself.

Verveer asked if all tickets presented had been for the 400 block of N. Frances Street. They were.

Pham-Remmele said that Okafo had presented himself well but she felt that defiance to authority while selling food could not be tolerated. She acknowledged that he had endured some personal hardship but that she did not approve of his lack of responsibility to be compliant.

Verveer wished to formally move and report to the Common Council that the evidence had been clearly and convincingly presented, that there was no defense to the factual incidents of this notice that substantially pertained to vending on the 400 block of N. Frances Street. Lee seconded. Rockwell recused himself.

2. Public Comment.

There was none.

3. Penalty Phase.

The City of Madison's Recommendation/Argument for the Penalty:

Foxgrover asked Mainella to comment on options for the penalty. Mainella said that the Common Council must make the final decision and will be asked to adopt the VOC recommendations and ultimately decide to suspend or revoke Okafo's license and for how long. Mainella sought revocation of Okafo's Street Vending License for the remainder of the street vending year which would end on April 14, 2009. She reviewed the charges against Okafo. In the previous Okafo Hearing of 2004, the VOC had then recommended a six month suspension but the Common Council had reduced it to thirty days. Mainella felt that this current situation is serious because it was the second occurrence. She said that Okafo had chosen to violate the law about once a week-end or at least twenty-nine times. The current policy stated that three parking tickets could lead to suspension of a vendor's license. Mainella felt that the City would best be served by revocation of Okafo's license for the remainder of the season and that the VOC recommend this to the Common Council.

The Vendor's Recommendation/Argument for the Penalty:

Okafo asked if the City wanted to put him out of business so that he would become a homeless person. He said that he was taking steps to pay off his tickets and his penalties for driving without a license. He added that he had struggled with personal and family expenses. He was waiting for the decision of the court. He had no self-recommendation for a penalty. He felt that he had paid enough. He complained about the Parking Enforcement person whom he felt had a negative attitude about him. Lee mentioned Okafo's loss of self-control and his defiance of uniformed City officials, adding that Okafo was not nice to the people who were paid to keep the City safe. Verveer asked Okafo if he had concluded his arguments. Okafo said that he had.

The Vending Oversight Committee's Discussion About Their Recommendation for Okafo's Penalty:

Foxgrover asked for comments about the penalty. She said that it was the vendor's job to know the rules and that she regretted that the VOC may have to suspend or revoke Okafo's license.

Lee made a motion that Okafo's license be revoked from the date that Okafo is notified by the City until November 30, 2008. She added that she felt that the nine months revocation would be a financial hardship. Verveer clarified that "suspension" pertained to a specific time period whereas "revocation" meant the entire remainder of the vending year ending April 15, 2009. Lee changed her motion by removing the word "revocation" and replacing it with "suspension". Verveer suggested that the license be suspended for a specific time period. Lee then chose the period of four months.

Pham-Remmele asked why the suspension should be less than the six months which the VOC had recommended the previous time. She felt that the second occurrence made it more serious.

Verveer felt that four months was not the correct number. He went on to say that Okafo had endured some difficult family circumstances and that the Jin's cart was a popular food cart that provided a service to the community. He commented that the Jin's cart was not up to the standards of the Mall/Concourse food carts. Verveer went on to say that Okafo had a long track record of disregard for the law and that he should therefore

face progressive discipline. Verveer then recommended that Okafo's license be suspended for at least six months, commenting that the City's recommendation of full revocation would be "the death penalty" for Okafo's business.

Lee withdrew her initial motion.

Pham-Remmele seconded Verveer's revised motion.

The motion passed unanimously.

Verveer asked if this recommendation would appear on the Common Council agenda of Tuesday, September 2, 2008. Mainella said that Hansen would prepare a Report to the Common Council which would also be sent to Okafo.

E. Notice of Hearing.

This matter had been addressed at the beginning of the Hearing.

The Vending Oversight Committee Hearing had concluded.

RECOMMENDATION OF THE VENDING OVERSIGHT COMMITTEE (as reflected in the above motion):

Suspend the Street Vending License of Jeffrey Okafo for a period of six (6) months, beginning on the date that Okafo is notified of the Common Council's action on this matter.