

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

March 4, 2014
3/18/14 CC mtg for adoption

Amending Sections 9.13(6)(n), 9.13(6)(l)1.a., and 9.13(6)(l)6.a. and b. of the Madison General Ordinances to revise the Late Night Vending Areas and require site assignment based on seniority.

Drafted by: Lara Mainella

Date: February 25, 2104

SPONSOR: Alder Resnick

DRAFTER'S ANALYSIS: This ordinance revises the Late Night Vending areas and site assignment process. Under current ordinance, there are four areas: Library Mall, Broom Street, 100 & 300 W. Johnson Street and 300-400 N. Frances St. The new ordinance would eliminate the Library Mall and Johnson Street areas and create these areas: Zone A, Zone B, Zone C, L3 and L4. Frances Street is reduced to the 300 block only and renamed Zone A. 400 W. Gilman is being added as Zone B. The Broom Street area would remain the same, but is renamed Zone C. Zones A, B and C will be restricted to a maximum number of vendors at any one time and only vendors who have been assigned to that zone. The L3 area is the 500 block of N. Frances (Concrete Park) and consists of 3 assigned food cart sites. The L4 area is on the sidewalk at University and Lake and consists of one assigned site for a small push cart.

Under the current ordinance, a licensed Late Night Vendor can vend on a first-come, first served basis in the Broom Street and Johnson Street areas. Under this amendment, first-come, first served is being eliminated and all Late Night Vendors will require a zone or site assignment. Vendors will be assigned on an annual basis to a zone or site, based on seniority determined by the year the vendor first purchased a Late Night Vending License, minus any demerit points for citations or health code violations.

The new process would take effect upon adoption of this ordinance. Late Night Vending licenses and new zone/site assignments under this ordinance would run from April 15-April 14.

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

1. Subdivision (n) entitled "Late Night Vending Areas in the Mall/Concourse" 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 in the Mall/Concourse.

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 6:00 a.m.

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.

Approved as to form:

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: One (1) Late Night Vending License shall be required for each vending cart or food stand. 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 late night vending LNV area during Late Night Vending LNV hours without the licenses required hereunder~~ and without an LNV zone or site assignment.

3. Late Night Vending Areas:

~~a. 700 block of State Street (Library Mall). Late Night Vending in this area shall be from assigned sites only and is prohibited in any other location including any part of the roadway, parking lanes or legal parking spaces (i.e. the street). Late Night sites will be assigned under Sec. 9.13(6)(n)4.~~

a. Zone A: 300 Block of North Frances. Zone A is located on the west side of the 300 block of North Frances Street as shown on the official LNV map approved by the VOC and on file at the Office of Business Resources ("official LNV map"). A maximum of two (2) licensed Late Night Vendors may vend from legal parking spaces within Zone A at any one time. Only licensed Late Night Vendors who have been assigned to Zone A may vend in Zone A, and vendors will be assigned to a zone by seniority under Sec. 9.13(6)(n)4.b.

~~b. 300 and 400 blocks of North Frances Street (Frances Street). Late Night Vending in this area shall be restricted to small push carts only, from assigned sites only, and is prohibited in any other location including any part of the roadway, parking lanes or legal parking spaces (i.e. the street). Late Night sites will be assigned under 9.13(6)(n)4. See Sec. 9.13(6)(n)4. for the definition of small push carts.~~

b. Zone B: 400 Block of West Gilman. Zone B is located on the south side of the street in the 400 block of West Gilman Street, near University Avenue, as shown on the official LNV map. A maximum of two (2) licensed Late Night Vendors may vend from legal parking spaces within Zone B at any one time. Only licensed Late Night Vendors who have been assigned to Zone B may vend in Zone B, and vendors will be assigned to a zone by seniority under Sec. 9.13(6)(n)4.b.

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 an the official LNV map approved by the VOC and on file at the Office of Business Resources. Occupancy shall be on a first-come, first-served basis, except that any licensed Mall/Concourse vendor with an assigned site in this area shall have priority within their assigned site. 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. 100 and 300 blocks of West Johnson Street. Occupancy of these two (2) blocks for Late Night Vending shall be on a first-come, first-served basis, except that any licensed Mall/Concourse vendor with an assigned site in one of these blocks shall have priority within their assigned site.~~

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.

4. Application, Site Assignment. Vendors holding a basic street vendor license 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. Unassigned Late Night Vending Areas: If not applying for an assigned site, applications may be filed at any time. Approval and issuance of the license shall follow the general procedure in Sec. 9.13(3).~~

~~ba. Assigned Late Night Sites: Applications for an LNV zone an assigned site (Library Mall or Frances Street only) 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 site assignment, or will forfeit the site assignment. Failure to use an assigned vending LNV zone or site by June 1st will result in forfeiture of the site assignment. Only one (1) Late Night zone or site will be assigned per vendor, per season, and site such assignments are not transferrable.~~

~~b. Late Night Site Assignment Procedure. The Vending Coordinator shall establish vending sites in the Library Mall and Frances Street areas consistent with Secs. 9.13(6)(n)3.a. and b., on an official map available at the Office of Business Resources,~~

~~Mall/Concourse food vendors with an assigned site in one of these areas will have first priority to use their site for Late Night vending, but must follow the application process in Sec. 9.13(6)(n)4.b. and purchase a Late Night Vending License.~~

All other applicants shall be ranked according to a seniority system. Seniority shall be calculated by counting the number of vending seasons that the vendor has purchased an Basic Street Vendor 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 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 total number of years of seniority. If a vendor takes goes two (2) sabbaticals in a three (3) year period consecutive vending seasons 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. For individual applicants, the name on the late night current LNV application and the basic street vendor LNV license used for seniority must be the same. If the late night license applicant is a business organization, the basic street vendor license used for seniority must be in the name of an officer, member, partner, or the sole proprietor of the business. If more than one applicant was issued an basic 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 with the most seniority (minus any demerit points) will be assigned his/her first preferred zone or site, the next vendor assigned to his/her first available preferred zone or site, and so on; until all applicants have been assigned a late night zone or site or until the sites all are full. If applicants remain after all sites 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 site assignments have been made shall be offered to the highest-ranking vendor on the waiting list.

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 department 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), if applicable, and the person or business 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, 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) (2007-2008) and that fit entirely within a footprint of 4 feet by 8 feet: \$125/annual.
 - b. All other food vending carts or stands: \$350/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. 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)."

2. Subparagraph a. of Paragraph 1. entitled "Hours" of Subdivision (l) entitled "Miscellaneous Vending Restrictions" 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:

"a. Permitted hours in the ~~700 block of State Street~~ 500 block of North Frances Street (Concrete Park) shall be from 5:00 a.m. to 8:00 p.m., ~~except that Mall/Concourse food vendors with a Late Night Vending License for their assigned site may continue vending from 8:00 p.m. through the Late Night Vending hours under Sec. 9.13(6)(n).~~"

3. Subparagraph a. entitled "Snow Removal" of Paragraph. 6. entitled "Snowfall Procedures for Food, Arts/Crafts, and Late Night Vendors" of Subdivision (l) entitled "Miscellaneous Vending Restrictions" 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:

"a. Snow Removal. If a Food or Arts and Crafts Vendor's assigned site has accumulated snow when the vendor arrives, and the vendor wishes to vend, the vendor must clear the snow from the site before placing the cart or other vending equipment in the site, and may not use another site nor otherwise alter the position of the cart from its approved position within the vendor's assigned site. Vendors with sites on the Capitol Concourse or Municipal Building Vending Area shall push the snow toward, but not into, the road, and Vendors with sites in the 700 and 800 blocks of State Street shall push the snow toward the middle of the mall. Vendors shall keep a four foot (4') perimeter around the vending cart or equipment clear from accumulating snow at all times. This procedure also applies to Late Night Vendors in the ~~700 block of State Street~~ the 500 block of North Frances Street (Concrete Park) and any other LNV site on a sidewalk or sidewalk area."

4. Subparagraph b. entitled "Snow Emergencies" of Paragraph. 6. entitled "Snowfall Procedures for Food, Arts/Crafts, and Late Night Vendors" of Subdivision (l) entitled "Miscellaneous Vending Restrictions" 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:

- “b. Snow Emergencies. Late Night Vendors in the ~~700 block of State Street~~ the 500 block of North Frances Street (Concrete Park) and any other LNV site on a sidewalk or sidewalk area, Mall/Concourse Food Vendors and Arts and Crafts Vendors shall not vend on any day when the City has declared a snow emergency under Sec. 12.045(1).”