



City of Madison

City of Madison
Madison, WI 53703
www.cityofmadison.com

Agenda - Approved

VENDING OVERSIGHT COMMITTEE

Wednesday, December 12, 2012

5:00 PM

215 Martin Luther King, Jr. Blvd.
Room 313 (Madison Municipal Building)

If you need an interpreter, translator, materials in alternate formats or other accommodations to access this service, activity or program, please call the phone number below at least three business days prior to the meeting.

Si necesita un intérprete, un traductor, materiales en formatos alternativos u otros arreglos para acceder a este servicio, actividad o programa, comuníquese al número de teléfono que figura a continuación tres días hábiles como mínimo antes de la reunión.

Yog hais tias koj xav tau ib tug neeg txhais lus, ib tug neeg txhais ntawv, cov ntawv ua lwm hom ntawv los sis lwm cov kev pab kom siv tau cov kev pab, cov kev ua ub no (activity) los sis qhov kev pab cuam, thov hu rau tus xov tooj hauv qab yam tsawg pab hnuv ua hauj lwm ua ntej yuav tuaj sib tham.

CALL TO ORDER / ROLL CALL

Include introduction of members.

APPROVAL OF MINUTES

Minutes of October 31, 2012

PUBLIC COMMENT

Three Minutes Per Speaker

DISCLOSURES AND RECUSALS

Members of the body should make any required disclosures or recusals under the City's Ethics Code.

NEW BUSINESS

- 1 [28581](#) **DISCUSSION ITEM: 201 Food Cart Review Results and Format of Review, including rank-ordered list, duration, consideration of throwing out high and low scores, consideration of "green" points, recycling, and encouraging vegetarian menu items.**
Attachments: [recycle.pdf](#)

- 2 [28582](#) **ACTION ITEM: Approve revised maps of Capitol Square and Southeast Campus Vending Area including newly added T and E tabling sites. Determine whether Street Vending Coordinator should be granted authority to select future number and location of E sites.**
Attachments: [maps.pdf](#)

REPORTS

- [25754](#) **REPORT OF STREET VENDING COORDINATOR**
Attachments: [Street Vending Report_Nov_Dec 2012](#)
 [Street Vending Report Sept_Oct 2012.pdf](#)
 [Street Vending Report_May 2012](#)
 [Street Vending Report_March 2012.pdf](#)

For November and December 2012

DISCUSSION ITEMS

- 3 **DISCUSSION ITEM: Sidewalk Cafe Alcohol Management and Sidewalk Cafe Closing Times**

4 DISCUSSION ITEM: Stencil City-approved locations on the outer Capitol Square

Lara Mainella comments:

Stencils for permitted street musicians and street artists, etc. (re: First amendment issues – your own written comments or summary, nothing formal)

OK. So the issue of stenciling, by itself, is no big deal. The big legal question is how do we lawfully regulate street musicians and artists, especially if they aren't selling anything? What kind of regulatory scheme would be appropriate, and how can we make sure those regulations do not run afoul of the First Amendment to the U.S. constitution, since music and visual art are usually considered forms of protected speech. The constitution allows a city to regulate the "time, place and manner" that speech is expressed. But it must be done in a way that is neutral – the regulations cannot favor one person's "message" over another. The neutral regulations must also meet these three standards:

- (1) The regulations must further a "substantial" governmental interest. So the VOC and ultimately the Common Council would need to identify what interests or goals are being met by the new regulations. Two popular goals are the improvement of traffic and pedestrian safety, and visual aesthetics. (side note - I wonder if audible aesthetics could also be included. The legal precedent surrounding the regulation of noise, sound, music is a different category of law that I am not as familiar with... so this will require more research.)
- (2) The regulations must be "narrowly tailored" to address the goals identified above. You don't want to use a hammer to swat a fly ???
- (3) The regulations must leave open "ample alternative channels" for sharing their "message" or speech. So – if we say that musicians cannot perform except at these 5 designated spots on the square, we must be able to show that there are other locations of similar quality and desirability where the musician could perform, unfettered. The law does NOT require us to give everybody their 1st or 2nd choice of where to perform music or art. The law does not guarantee they will have the "best" location. But we need to leave open options. So for example, the City decides that there are a limited number of places where it is OK to play street music downtown - because of the crowds, and the disturbances of people working and studying, etc. But the musician is free to set up, say, anywhere outside the mall/concourse, just a couple blocks away, that might be considered an ample alternative channel. But if the musician wanted to sing songs of protest against the governor, for example, but the regulations prohibit any musicians from playing on the sidewalks of the square, if the regulations provide space only on Butler St., Butler would probably NOT be considered an adequate alternate location because the intended audience could not hear the "message." However – there may be other ways that a person could get across their message other than by playing music. They could march, or hold up signs, or hand out flyers. Then the legal question would be whether the speaker has the right to choose their preferred mode of speech – i.e. music.

This is a short summary of the legal issues involved in regulating street musicians and street artists, prepared for Warren Hansen and the VOC. This is not a formal opinion of the City Attorney.

I recommend that these details be worked out by staff first, and presented to the VOC later after a set of proposed regulations is ready to be considered. Choosing the locations is probably the easiest and last step. Deciding on the method to regulate and assign spots will take more work.

Lara Mainella 12-6-12

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[28583](#)**DISCUSSION ITEM: Late Night Vending Status Quo and possible recommendations for change****Attachments:** [meters.pdf](#)

From: Mainella, Lara
Sent: Thursday, December 06, 2012 5:18 PM
To: Hansen, Warren
Subject: RE: VOC stuff

Hi - see below for comments (in italics....)

You may share any and all of this with the VOC. You can cut and paste into another format if you like. Mike V. wants me at the meeting for the late night item, so I guess I will attend.... Can you put that one close to the beginning of the agenda?

From: Hansen, Warren
Sent: Thursday, December 06, 2012 8:03 AM
To: Mainella, Lara
Subject: RE: VOC stuff

Late Night Vending (specifically WI law against assigning metered parking spaces to people, which you could send to me as a document or as your own written summary, nothing formal) First – remember that it is an ordinance violation to do street vending from a parking meter during hours when the meter is enforced. See MGO 12.145(1) (d). After the hour when the meter is no longer enforced, a vendor can park the vending vehicle there and vend – with activity directed at people on the sidewalk.

Whether an on-street parking space is metered or not, the City cannot permanently assign or reserve any type of on-street parking for individuals or individual businesses. I found a couple of city attorney opinions on this subject, attached. These opinions form the basis for the city's long-standing position which is that on-street parking spaces cannot be reserved for certain individuals....The streets are to be held open for the use of the public for travel, etc. and cities do not have the authority to restrict the use of the streets beyond what the authority expressly given to cities by the state. There is no state law that would allow a parking space to be reserved for a street vendor to conduct business.

Here is an excerpt of a memo I prepared for the police chief in 2002:

"The City of Madison retains control over streets within our jurisdiction. Sec. 62.11(5), Wis. Stats. The City has a duty to maintain the streets for the free use of the public in the ordinary way and should not unnecessarily surrender or delegate its power over the streets to another. "The right of the public to use the streets in a proper manner is absolute and paramount. The streets and public ways of a municipal corporation are held by it in trust for the public, to be used for the ordinary purpose of travel. . ." McQuillin's Municipal Corporations, Sec. 30.73. See also City of Madison v. Reynolds, 48 Wis. 2d 156, 180 N.W. 2d 7 (1970), regarding the obligation to provide the public with the "free use of all highways." "

None of the applicable laws have changed since these opinions and memos were prepared. The roadway portion of the streets should be used for driving, parking, transportation - typical vehicular uses. (The "roadway" is the part where vehicles operate, as opposed to the terrace and sidewalks, which are also technically part of the highway right of way but not used for vehicles. Wis. Stat. 340.01(54).) The fact that our

ordinance is called "street vending" is a bit of a misnomer since the vast majority of our vendors operate on the sidewalk. The vendors who operate from a vehicle in the street are required to follow all parking and traffic laws, just like everybody else. The fact that they are doing vending and have a vending license does not entitle them to special parking privileges. Remember it was not long ago that city ordinance actually prohibited vending from a parking metered space....

6 DISCUSSION ITEM: Consider grace period for licensing new food cart employees as City of Madison Street Vendors

ANNOUNCEMENTS

ADJOURNMENT