

REPORT OF THE VENDING OVERSIGHT COMMITTEE
On the Hearing to Suspend or Revoke the Late Night Vending License of
Leia B. Boers d/b/a Leia's Lunch Box:

Recommendation to Revoke Late Night Vending License for 1 Year

At its regular meeting on November 29, 2017, the Vending Oversight Committee ("VOC") held a hearing to decide the above licensing matter, pursuant to sec. 9.13(8), MGO.

VOC members present: voting members: Ald. Mike Verveer, Ald. Zach Wood, Chaitannya K. Agni, Marlys M. Miller (Chair), Rena Gelman, Saran Ouk.
Non-voting technical advisors: Maureen K. O'Grady, Sean Lee, Aaron Collins

Participating in the Hearing:

Assistant City Attorney Kate Smith, representing the Department of Planning, Community and Economic Development (DPCED) and the Madison Police Department and Meghan Blake-Horst, Street Vending Coordinator.

Witnesses for the City:

Lt. Brian Austin, Madison Police Department
Charlotte Adams, property manager of the Statesider & The Towers apartments
Meghan Blake-Horst, City of Madison Street Vending Coordinator

Leia B. Boers, Licensee.

Witnesses for Leia B. Boers: none.

The VOC members listed above all participated in the hearing.
Assistant City Attorney Lara Mainella provided legal advice to the VOC.

Summary of hearing:

A quasi-judicial hearing was held on November 29, 2017 pursuant to the "Vending Oversight Committee Rules of Procedure for Hearings under sec. 9.13, Madison General Ordinances, established by the Vending Oversight Committee on 9/24/03." (Copy attached.) The hearing was properly noticed through the VOC's agenda, as item 1.

An audio recording of the November 29, 2017 hearing is available as an attachment to this item in Legistar: <https://madison.legistar.com/LegislationDetail.aspx?ID=3213204&GUID=D982C510-88D6-43A8-87DD-15E9376BE6DF&Options=ID|Text|&Search=49580>

The Licensee was notified in writing of the charges, the right to a hearing, and the date, time and place for the hearing at least ten calendar days prior to the hearing date of November 29, 2017. (**Exhibits 4 & 5.**)

The Notice (**Exhibit 4**) informed the Licensee that the designee of the Director of Planning and Community and Economic Development has commenced proceedings to suspend or revoke her Late Night Vending license for "Other violations substantially related to vending."

Under Sec. 9.13(8)(a) of the Madison General ordinances, "any category or type of street vending license issued hereunder may be revoked, suspended or not renewed for a stated period of time or otherwise limited by the imposition of conditions or restrictions by the Common Council, after notice and hearing as provided herein, for any of the following:..... any violations of any other Madison General Ordinance or state statute where the circumstances of the offense are substantially related to vending activities."

Three violations of law were alleged in the Notice:

Date of Violation: October 8, 2017. Charges:

- A. State of Wisconsin v. Ellis J. Slaughter, Case No. 17CF2492
2nd Degree Recklessly Endangering Safety, Wis. Stat. 941.30(2)
Class G Felony

Disorderly Conduct, Wis. Stat. 947.01(1)
Class B Misdemeanor**
- B. City of Madison v. Leia B. Boers, Citation No. A163827
Obstructing a Police Officer, Madison General Ord. Sec. 5.06(2)**

City's Case: At this hearing the "City" means the City of Madison through the Street Vending Coordinator, who was represented by Assistant City Attorney Kate Smith. The City called three witnesses. All witnesses were sworn in by oath given by the Chair of the VOC prior to testifying.

Lt. Brian Austin. The City's first witness was Lt. Brian Austin, Patrol Operations Lieutenant for the Madison Police Department Central District. Lt. Austin testified that he became aware of an incident on October 8, 2017 at approximately 1:40 AM on 500 block of N. Frances Street near the Leia's Lunchbox food vending cart near the Statesider Apartments. Austin testified based on his knowledge of the police reports and investigation of this matter by other officers in the department. Austin became aware of an incident involving a Mr. Gardner (ph.) and another male who were being aggressive toward a food cart and those in line for the food cart. A person subsequently identified as Ellis Slaughter came out of the food cart in response to this, then went back in, and came back out with a gun. Slaughter was reported to have brandished a weapon in the area around the food cart that evening. According to the sworn criminal complaint in State v. Ellis Slaughter, which is attached to the Notice (**Exhibit 4**) a witness saw Slaughter put the rifle up to a person's head. A video recording was presented through Austin's testimony, showing a portion of the incident in question. Austin testified that this was a true and accurate copy of a video that was obtained from a civilian by the police department as part of the investigation, and the same video had been circulated on social media and was on the local news. A hard disc containing a copy of the same video was offered as **Exhibit 1** available at this link: <https://youtu.be/wnCYHi1TS2s>

The Committee viewed the video which depicts a black male holding what appears to be a firearm in his hands and walking briskly up concrete steps into a group of people. A female voice can be heard screaming. The man approaches some other people and a woman in maroon pants intervenes and the man walks away with the gun. Austin identified the man with the gun in the video as Ellis Slaughter and the woman in maroon pants as Leia Boers. Other people are shown reacting to Ellis or walking away.

Austin testified regarding the Madison Police Department's investigation of this incident, conversations with Boers, and receiving a lot of calls or complaints about the incident that evening. The incident was investigated by Madison Police officer investigation was conducted by another Madison Police Officer. Lt. Austin summarized the investigation including interviews with Ms. Boers regarding the incident and a search warrant executed at the home where Boers and Slaughter live together at 1712 Onsgard Rd. #4, Madison, WI. Austin testified that Boers and Slaughter live together at the same address, are romantically involved and have a child together and that Slaughter is also an employee of Boers' food cart, Leia's Lunchbox. Boers did not refute or deny this.

Austin also testified that the search of their home recovered a gun case and ammunition and a receipt for a 22 caliber firearm and other gun-related items, and that in the opinion of the Madison Police Department the items recovered in the home are consistent with the type of gun shown in the video. (The gun shown in the video has not been recovered.)

Austin testified that according to the investigation, Boers expressed surprise that these items were recovered in her home. Austin testified that Slaughter called Boers from the Dane County Jail regarding the disposal of gun paperwork in their home.

A print-out of an October 9 Facebook post on Leia's Lunchbox's Facebook page, and comments in response to the post, was presented as **Exhibit 2**. Leia's Lunchbox apologizes for the behavior of "one of our employees this weekend." Austin said he does not know who is the administrator of this Facebook page.

Ms. Boers cross-examined Lt. Austin, asking if it was cold that night, such that a person would need a jacket, and he did not recall the weather. Boers asked whether a weapon such as that shown on the video could be concealed inside a 2XL sweatshirt, Austin did not think so. Boers asked if it is common for a person who's experienced trauma not to remember all details of an incident, to which Austin agreed.

On redirect by the City, Austin was asked if the cart was still operating after the incident in the video, did Leia remain at the cart and was she in fact still vending that night after the incident, to which Austin answered yes.

Committee members asked Austin to describe the size of the gun, he answered it is a rifle-style gun with a barrel, etc. and described the part of such a gun without reference to size. Austin was asked if a person could possess this type of weapon in a food cart for defense. Austin answered that he doesn't know about rules of the cart but in general, a person can possess this type of weapon unless they have a legal status that prohibits it.

Charlotte Adams. City's second witness was Charlotte Adams, the general manager for the Statesider Apartments at 505 N. Frances Street and the Towers apartments at 502 N. Frances Street, Madison, WI. She is familiar with the incident because it occurred between her two buildings. A resident texted her a video of the incident and Adams fielded many phone calls and texts from residents and their parents, 120+ calls or texts. Adams explained there was an unrelated incident with a resident being hit and some of these calls were due to that confusion but many calls or texts were in response to the gun incident outside these apartment buildings which house primarily young college students. Parents of her residents were very upset that the vending cart was allowed to continue operating after the incident. Adams testified that she had to hire extra security, an armed security person to relieve the concerns of her residents and their parents. Adams testified on cross examination by Boers that she spoke to the mom of the male student who was hit in the unrelated incident and the mom did not express concern to Adams about removing the cart.

Meghan Blake-Horst. City's third witness was Meghan Blake-Horst, City of Madison Street Vending Coordinator. Blake-Horst testified that the License holder is Leia B. Boers who operates Leia's Lunch Box. **Exhibit 3** is a copy of her Late Night Vending License # L1CLNV-2015-00069 issued on 4/15/2017.

Blake-Horst testified that she mailed the Notice of this hearing (**Exhibit 4**) to Boers via certified mail on November 13, 2017 with receipt on November 15, 2017 as shown in **Exhibit 5**, a certified mail receipt signed by Slaughter at Leia Boers' home address.

Blake-Horst explained that she is only seeking a 1-year revocation of the Late Night vending license and not recommending any action against Boers' Basic or Mall/Concourse (daytime) Food Vendor licenses. The Committee asked if Ellis Slaughter has his own vending license, Blake-Horst answered that he does not hold a Basic Street Vendor license but he might be listed on Boers' Basic "Umbrella" license which allows a number of people who work in a food cart to be covered under one license for purposes of daytime food vending, not the Late Night license.

Licensee's Case:

After the City concluded its case, the Licensee was given the opportunity to testify. Ms. Boers declined to give any direct testimony but was sworn in for the purpose of questions from the Committee.

A Committee member asked Boers whether she believes the police testimony was accurate. Boers replied that, regarding "the actual incident of October 8, yes." Boers testified that Austin's testimony regarding what she said during the investigation is "based on assumptions." Assistant City Attorney Smith asked on follow-up if the Madison Police officers called Boers as part of their investigation and did they call her looking for Slaughter, to which Boers answered yes to both. Boers was asked whether she operated her vending cart on October 8 at the Monona Fall Fest, she said yes, and when asked if Slaughter was there, she said he did not work at the event but he attended the festival and she saw him there.

Boers concluded her testimony by stating that she does not intend to vend "next year" regardless of what happens at this hearing.

Boers had no further testimony, was asked if she had any witnesses, did not call any witnesses and did not present any other evidence or exhibits.

Exhibits: All exhibits are attached to this Legistar file except, Exhibit 1 which is linked below.

The City's Exhibits 1-5 were received into the record without objection from Boers:

Exhibit 1 – disc with the video clip shown during the hearing, labeled "Leia's Gun Incident 10-8-17." Link to video: <https://youtu.be/wnCYHi1TS2s>

Exhibit 2 - Leia's Lunchbox Facebook Page post dated October 9

Exhibit 3 - License – Late Night Vendor – Liea's Lunch Box, Leia Boers

Exhibit 4 - Notice of Hearing to Suspend/Revoke Late Night Vending License issued to Leia B. Boers (3 page notice + copy of 2 page criminal complaint)

Exhibit 5 – Copy of a domestic return receipt for certified mail and registered mail for an article addressed to Leia B. Boers, signed by "Slaughter" on 11/15/17.

Closing Statements: Both sides made closing statements. The City requested a one (1) year revocation of Boers' Late Night Vending License based on the seriousness and dangerousness of the incident, and explained that the City was not seeking any sanctions on Boers' Basic or Mall/Concourse Food Vending Licenses.

Licensee Leia Boers concluded by explaining that she continued to vend that night after the incident with Slaughter because she had food orders to fill, and Boers apologized to the Committee for the incident.

FINDINGS OF FACT:

The Committee made detailed findings of fact on the record for each of the three charges in Exhibit 4 and adopted their findings of fact by consensus. The following is a summary of facts found for each charge:

A. 1. Second Degree Recklessly Endangering Safety (Wis. Stat. 941.30(2).)

The VOC finds that a violation of state statute 2nd Degree Recklessly Endangering Safety has occurred, as that statute is described in Count 1 of the Criminal Complaint attached to Exhibit 4, based on the following findings of fact:

- A commotion was caused relating to Ellis Slaughter exiting Leia Boers' food cart with an assault-style rifle on October 8, 2017.

- Ellis Slaughter violently engaged in behavior toward another, including pursuing two suspects, which endangered the safety of others.
- The video (Exhibit 1) shows Slaughter carrying a firearm.
- Multiple witnesses confirmed the person in the video is Slaughter.
- The testimony of the police officer summarizing the investigation and confirming the person in the video was identified as Slaughter is credible.
- The video and testimony of the officer demonstrate that people in the area were recklessly endangered by the activities of Slaughter that night.
- Lt. Austin's testimony was found to be truthful and reliable.
- Slaughter is an employee of Leia Boers' who works in her vending cart during Late Night Vending
- Exhibit 2, the Facebook post, confirms that the incident involved an employee of Leia's Lunchbox.
- There was no denial that Slaughter was the one involved.

The VOC finds that this violation of Recklessly Endangering Safety is substantially related to the street vending operations of Leia Boers because Ellis Slaughter was working in the "Leia's Lunchbox" food vending cart as Boers' employee when the incident occurred, while Boers was operating as a Late Night Vendor under her Late Night Vending License.

A. 2. Disorderly Conduct (Wis. Stat. 947.01(1).)

The VOC finds that a violation of Disorderly Conduct has occurred, as that statute is described in Count 2 of the Criminal Complaint attached to Exhibit 4, based on the following findings of fact:

- Slaughter was shown in the video (Exhibit 1) exiting the vending cart into a crowd of people with a weapon and this is disorderly behavior.
- Slaughter's identity was confirmed for the reasons listed in Section A. above.
- Police (Austin's) testimony and Adams' testimony demonstrate that many members of the community were disturbed by Slaughter's conduct:
 - Austin testified that he received numerous calls and complaints about the incident immediately afterward.
 - Adams' testified that she received more than 120 calls or texts from residents and parents of residents of the Statesider and the Towers apartment buildings who were upset and disturbed by witnessing or hearing about a person was brandishing a gun in an area immediately adjacent to the apartments. This included residents who saw what happened or heard about it from others.
 - Adams testified that she had to hire extra security and respond to complaints for her to take action in response to this incident at the vending cart.
- Based on the testimony of Austin and Adams it is likely that Slaughter's behavior tended to provoke a disturbance.
- Lt. Austin's testimony was found to be truthful and reliable

The VOC finds that this violation of Disorderly Conduct is substantially related to the street vending operations of Leia Boers because Ellis Slaughter was working in the "Leia's Lunchbox" food vending cart as Boers' employee when the incident occurred, while Boers was operating as a Late Night Vendor under her Late Night Vending License.

B. Obstructing a Police Officer, Madison General Ordinances sec. 5.06(2).

Sec. 5.06(2), MGO provides as follows:

- (2) Whoever knowingly resists or obstructs an officer while such officer is doing any act in her or his official capacity and with lawful authority, may be fined not more than five hundred dollars (\$500).

In this section:

- (a) "Officer" means a peace officer or other public officer or public employee having the authority by virtue of her or his office or employment to take another into custody.
- (b) "Obstructs" includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

The VOC finds that a violation of this ordinance occurred based on the following findings of fact:

- Testimony of Lt. Austin demonstrates that police officer(s) received contradictory or incorrect statements from Leia Boers during their investigation of Slaughter's alleged crimes.
- Lt. Austin testified of his knowledge of the police reports and the investigation by the other officers.
- Boers obstructed the police department's attempts to locate the weapon shown in the video (Exhibit 1.)
- Boers' personal relationship with Slaughter, including having a child together, suggests a motive to obstruct the investigation of serious alleged weapons offenses, despite the fact that the weapon itself was never located.
- Boers statement to police that she did not know about the gun being in the food cart was not credible, because:
 - in light of the phone conversations between Boers and Slaughter recorded from the Dane County Jail
 - Austin's testimony about the gun related items actually found in the home.
 - It is not plausible that a person wouldn't know a gun of that size (as shown in the video and described by Lt. Austin) was in a space as small as a food vending cart.
- Lt. Austin's testimony and the exhibits conveyed convincingly and clearly a chronology that does not match Boers' statements given to the police.
- Lt. Austin's testimony was found to be truthful and reliable
- The video (Exhibit 1) shows that Boers was present and saw the incident; Boers' statement to police that she did not see what happened with the gun was refuted by the video.
- Recorded phone conversations between Slaughter and Boers from the Dane County Jail, as testified to by Lt. Austin, demonstrate that Boers had knowledge of the gun because Slaughter asked her if she had disposed of paperwork relating to the gun.

The VOC finds this violation of Obstructing a Police Officer is substantially related to the street vending operations of Leia Boers because:

- The underlying incident being investigated occurred during street vending by Ms. Boers
- The obstruction relates to this incident (i.e. one that occurred while Boers was vending.)
- Slaughter, the person being investigated, is an employee of Boers who works for Boers during Late Night Vending, was working in that capacity on October 8 and has been charged with Reckless Endangerment and Disorderly Conduct
- Boers obstructed the investigation of crimes occurring in and around Leia's Lunchbox's Late Night Food Vending cart during Late Night Food Vending hours, thus directly related to her Late Night Food Vending License.
- The VOC believes Leia Boers knew there was a gun in her vending cart that night.

The Committee adopted the above findings of fact by consensus at the conclusion of the Fact Finding Phase.

Public Comment. There were no registrants for public comment during the public comment phase of this hearing.

PENALTY PHASE

Motion: A motion was made by Agni, seconded by Ouk, to recommend to the Common Council to revoke Leia Boers' Leia's Lunch Box Late Night Vending License for a period of 1 year from the date that the Common Council acts on the recommendation.

Discussion on the motion included concern that the only license presented to the Vending Oversight Committee for action is Boers' Late Night Vending License, not her Basic Street Vendor License or daytime Mall/Concourse Food Vendor license.

Discussion included statements about the grave seriousness of the incident and one member's concern that the Licensee is able to continue Late Night Vending in this location since the incident on October 8 because the license will not be revoked until the Council takes action. For this reason, the Committee requested this report be prepared in time for the Common Council to take action at its December 5, 2017 meeting. (Per sec. 9.13(8)(a) the Director of Planning and Community and Economic Development, or designee is directed to report its findings and recommendations to the Common Council and to the alleged violator within five (5) working days of the hearing.

The motion passed by a unanimous voice vote.

An audio file of the entire hearing is at attachment to this Legistar file and also available from the Street Vending Coordinator at the Office of Business Resources, 30 W. Mifflin St. Suite 502-507, Madison, WI.

RECOMMENDATION OF THE VENDING OVERSIGHT COMMITTEE:

For all of the reasons stated herein and on the record at the hearing held on October 8, 2017, including the testimony and exhibits received, the Vending Oversight Committee recommends:

That the Common Council revoke the Late Night Vending License of Leia Boers / Leia's Lunch Box for a period of one (1) year from the date the Common Council acts on this recommendation.

DUTIES OF THE COMMON COUNCIL REGARDING THIS RECOMMENDATION:

Under MGO 9.13(8)(a)3., "the Common Council shall convene to consider the report and recommendations of the Committee within thirty (30) calendar days of the Committee recommendation, or at the earliest possible time after thirty (30) days that a quorum can be attained. If the Director of Planning and Community and Economic Development, or designee, or alleged violator wishes to present any additional evidence they may do so and the Common Council may upon its own motion consider additional evidence as necessary to fairly decide the issue."

"9.13(8)(a)4. After due consideration of the fact finding report, the recommendations of the VOC and any additional evidence presented, the Common Council may by majority vote:

- suspend the license holder's license for a period of time not to exceed six (6) months, or
- revoke or not renew the license for a period not to exceed one (1) year, or
- place conditions or restrictions on the license for the remainder of the vending year in accordance with (c) below.*

The violator shall be notified within five (5) working days of the findings and determination of the Common Council."

"9.13(8)(a)5. The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within thirty (30) days after the date of the final determination."

**sub. (c) optional conditions: Note that the Vending Oversight Commission does not recommend any conditions as the recommendation is to revoke the license.*

“(c) Placement of Restrictions or Conditions. In lieu of revocation or suspension, the Common Council may by majority vote place reasonable conditions or restrictions on the license for the remainder of the vending year in order to effectuate the provisions of this chapter and ensure compliance by the license holder. No condition imposed may be contrary to or inconsistent with any ordinance, regulation or statute regulating vending activities. Permitted restrictions or conditions may only include the following: quantity and size of display tables and other equipment; days or hours of operation; monitoring of vending site by licensee; number of attendants or sales persons at site. If any licensee shall fail or neglect to comply with the conditions or restrictions imposed by the Common Council her/his license may be suspended or revoked in accordance with this section.”

Prepared by:

Assistant City Attorney Lara Mainella, Attorney for the Vending Oversight Committee

November 30, 2017

CC: Leia B. Boers
1712 Onsgard Road #4
Madison, WI 53704

Vending Oversight Committee
Rules of Procedure for Hearings under sec. 9.13,
Madison General Ordinances

established by the Vending Oversight Committee
9/24/03

A. Opening Remarks and Explanation by Chairperson.

1. Call hearing to order.
2. Determine if hearing was properly noticed (cc: City Clerk, parties)
3. Check if all parties are present.
 - a. Ask for appearances for the record (name, spelling of last name for record, representation – City representative(s) and vendor.)
 - b. Introduce the parties to the quasi-judicial body, by name of each member.
 - c. Introduce staff who will be the recorder and list the functions:
 - 1) keep accurate records of proceeding
 - 2) tape record all testimony
4. Explain purpose of hearing.
 - a. This proceeding governed by MGO Sec. 9.13 and the Regulations adopted thereto, and any Rules or Procedures adopted by the Vending Oversight Committee (VOC.)
 - b. Recite the charges or allegations or read from the document(s) that commenced the proceeding in question.
 - c. Explain the VOC's role is to sit as a quasi-judicial body, listen to the evidence, and make a decision. Describe the decision-making options based upon the type of proceeding before the VOC.

B. Outline of the Sequence of Proceeding:

1. Opening remarks by the Parties -a time limit may be determined by the Chairperson.
2. City witnesses
 - (a) direct examination
 - (b) cross-examination
 - (c) opportunity for follow-up questions by vendor
 - (d) questions from committee
3. Vendor's witnesses (same sequence)
4. Rebuttal witness(es)
5. Closing remarks by the Parties – time limit may be determined by Chairperson.

C. Additional Rules for the Hearing:

1. One person speaks at a time as recognized by Chair.
2. No vulgarity; respect for all parties present.
3. No participation by any one other than the parties, their counsel if any, witnesses, and Committee members. Additional registered speakers may speak after deliberations and fact-finding but before a penalty, where appropriate, is imposed.
4. Request permission to speak if you need to interrupt the proceeding for a clarification.
5. Once testimony closed, nothing further from witnesses.
6. All witnesses speak only under oath of telling truth. Chairperson shall administer a suitable oath to all witnesses.
7. Committee is not bound by the Rules of Evidence, but the Chairperson may exclude evidence not relevant or unduly repetitious.
8. If there are objections to admission of evidence, Chairperson will give each party a chance to speak, and then make ruling on admissibility.
9. Findings of fact shall be based upon evidence upon which reasonable persons could rely to make a decision.
10. In absence of a specific rule, Roberts Rules of Order shall apply.
11. Stipulations may be presented at the beginning of the hearing.

D. Deliberations and Decision-making.

1. Fact-Finding Phase. After the close of evidence (witnesses, testimony, and receipt of any documents submitted by the parties) and any closing remarks by the parties, the Committee shall deliberate and make findings of fact as appropriate.
2. Public Comment. Any members of the public who have registered to speak on the issue shall be allowed to speak after the Fact-Finding Phase.
3. Penalty Phase. After the Fact-Finding and Public Comment, the Parties shall be allowed to make a recommendation or argument for penalty as appropriate. The Committee shall deliberate by appropriate motion, as to the imposition of a penalty and/or recommendation to the Common Council, as is appropriate for the proceeding before them.

The above rules were adopted by the Vending Oversight Committee at its regular meeting on September 24, 2003.

See also Sec. 9.13, Madison General Ordinances, for additional specific procedures established by ordinance for hearings before the Vending Oversight Committee.