

ID# 18067 – Report and Recommendation of the Vending Oversight Committee on the Hearing to Suspend or Revoke Vending License of Jeffrey A. Okafo d/b/a Jin’s Chicken and Fish, based on the “Notice of Hearing to Suspend or Revoke Vending License.”

A special hearing of the Vending Oversight Committee (“VOC”) was scheduled for April 12, 2010 at 5:00 p.m. to decide the above licensing matter. A hearing was held on that date, pursuant to the VOC’s Rules of Procedure for Quasi-Judicial Hearings under Section 9.13, Madison General Ordinances, established by the VOC on 09/24/03.

The following is a summary of the hearing:

1. VOC Chairperson Foxgrover called the hearing to order at 5:11 p.m., roll call was taken, with the following members present: Karen Foxgrover, Rosemary Lee, Austin McClendon, Tori Pettaway, Ald. Thuy Pham-Remmele and Sara Richards. Ald. Michael Verveer arrived at 5:18 p.m. Assistant City Attorney Lara Mainella was present as counsel to the VOC. Street Vending Coordinator Warren Hansen, the VOC staff person, was there to record the minutes, to answer street vending questions, and to act as a witness. Office of Business Resources Manager Matt Mikolajewski was present as an observer.
2. Foxgrover asked Street Vending Coordinator and executive secretary to the VOC Warren Hansen if the hearing had been properly noticed, he confirmed that it had been. A general public comment period was noticed on the agenda, but there were no registrants.
3. Foxgrover asked if all parties were present. The City of Madison’s case was prosecuted by Assistant City Attorney John Strange. The vendor, Jeffrey Okafo, was not present. The committee discussed options for what to do if the vendor is not present, asked Mr. Strange for his position on options and consulted with Ms. Mainella on the same. It was acknowledged that neither MGO 9.13 nor the Vending Oversight Committee’s Rules of Procedure address what to do if the vendor does not appear at the hearing. At approximately 5:32 p.m. the chair asked the Vending Coordinator to check his voice messages, he did so and reported no voice messages from the vendor. At 5:40 p.m. the committee decided to proceed without the vendor to conduct an expedited hearing to take evidence from the City of Madison as presented by Mr. Strange, so that the VOC could make an informed recommendation to the Common Council. Mr. Strange distributed hard copies of the Notice of Hearing to Suspend or Revoke Vending License issued to Mr. Okafo, which informed him of the time and place of the hearing and the charges against him, and his right to appear and dispute the charges. Included with the hard copy of the Notice was a Certificate of Personal Service showing that Mr. Okafo was personally served with the notice by a police officer on March 27, 2010. (See Legistar ID#18067.)

4. Foxgrover explained the next steps for the hearing from the Rules of Procedure. The committee waived the reciting of the charges. The Committee followed the outline from the Rules of Procedure to the extent it was practical to do so without the vendor present.

Opening remarks:

Strange gave a summary of the charges outlined in the Notice of Hearing to Suspend or Revoke Vending License, the significance of the charges and the history of past action against this vendor's license.

Notice of Hearing to Suspend or Revoke Vending License: The Committee received a hard copy of the "Notice of Hearing to Suspend or Revoke Vending License," which is the charging document. (Please see a full copy of this Notice which is an attachment on Legistar ID# 18067 and part of the record of this hearing.) The Notice was signed by Warren Hansen with a date of 5/25/10. Hansen explained that he actually signed it on March 25, 2010. The VOC allowed the date of his signature to be amended to March 25 at the hearing. This Notice includes:

- Description of the charges against the vendor and the grounds for suspension or revocation.
- Notice of the time and place of the Hearing and the vendor's right to contest the charges.
- Statement that the City is seeking a 1-year revocation of the vendor's license.
- Attachment A, a copy of the Common Council proceedings of September 2, 2008, showing the Council's action on ID#11414 to suspend Jeffrey Okafo's Street Vending License for 6 months in 2008.
- Attachment B, a list of nine parking tickets labeled "Parking Tickets Issued to Jeff A. Okafo, d/b/a Jin's Chicken and Fish."
- Certificate of Personal Service indicating that Madison Police Officer Reginald Patterson personally served Jeffrey A. Okafo with the Notice of Hearing on March 27, 2010 at approximately 7:05 a.m.

At the request of the VOC, ACA Strange called his witnesses to testify:

(1) City's First Witness –Madison Police Officer Chandra Dolsen. Strange called Madison Police Officer Chandra Dolsen, who was sworn in by Foxgrover. Officer Dolsen's testimony is summarized as follows:

ACA Strange repeated the same format in questioning Officer Dolsen for Exhibits A, B, C, D and E, asking her to identify each exhibit as a Municipal Court citation, to state the date of each, to identify who the citation was written to (Jeffrey Okafo in all cases), and to describe each violation, which she did.

Exhibits F and G were combined and submitted with a three-page report, both written by Dolsen, she said, and both citations were for no vendor present.

Exhibit H, she said, consisted of seven Madison Municipal court case docket print-outs, each page corresponding to Exhibits A through G. She could see that four of the citations were defaults and three were "no contest".

Exhibit I, Dolsen said, were parking violations against Jeffrey Okafo at locations where he had conducted vending activities.

Exhibit J was a police report by Dolsen describing two citations she had issued to Okafo, one for Hit and Run and the other for Operating After Revocation. She said that she had reviewed the tape of the U-Haul lot which had a twenty four hour surveillance camera. The tape confirmed that there had been a collision involving the JD's Express food cart and the FIB's food cart which had been parked there. JD's Express food cart owner James Davis told Dolsen that Okafo had been driving when the collision and subsequent Hit and Run circumstances had occurred. She added that Okafo's driver's license had been revoked so that he was driving illegally.

Exhibit K, Dolsen explained, consisted of four pages of information including two police reports by a citizen, the first to report the unattended Jin's Chicken Cart and the second about the smell of propane from that cart. Fire staff detected no such odor when they visited the scene, Dolsen added.

Dolsen said that her knowledge of this vendor was based on police reports written by other MPD staff as well as her personal observations of and interactions with him.

Exhibits: The following exhibits were received through the testimony of Officer Dolsen. Please see complete copies of each Exhibit, available on Legistar as attachments to this ID# 18067 and an official part of the record of this hearing:

- **Exhibit A** – Madison Municipal Citation A062477, citation issued to Jeffrey A. Okafo for No Street Vending License, date of violation, 9/18/08, and police reports, 4 pages total.
- **Exhibit B** – Madison Municipal Citation A062473 issued to Jeffrey A. Okafo for Vending While Suspended, date of violation 11/26/08, and police report, 4 pages total.
- **Exhibit C**- Madison Municipal Citation A063547 issued to Jeffrey A. Okafo, Vending While Suspended Prohibited, date of violation 3/5/09, and police reports, 4 pages total.
- **Exhibit D** – Madison Municipal Citation A075352 issued to Jeffery A. Okafo for Late Night Vending Violation (not in assigned area), date of violation 5/9/09, and police report, 3 pages total.
- **Exhibit E**- Madison Municipal Citation A084153 issued to Jeffrey A. Okafo for Vending Restrictions Violation: No Storage of Vending Equipment w/o Vendor Present, date of violation 1/14/10, 4 pages total.
- **Exhibit F** – Madison Municipal Citation A031793, issued to Jeff A. Okafo for No Storage of Vending Equipment W/Out Vendor Present, date of violation 3/6/10, 1 page.
- **Exhibit G** – Madison Municipal Citation A067065, issued to Jeff A. Okafo for No Storage of Vending Equipment Without Vendor Present, date of violation 3/6/10 at 11:00 a.m. Exhibits F and G were combined and submitted with one 3-page police report under case number 2010-25036 describing the vending violations on page 3 of the police report.
- **Exhibit H**- Seven (7) Madison Municipal Court case docket print-outs, each page corresponding to the 7 vending citations shown in Exhibits A through G. Exhibit H shows a conviction and unpaid forfeiture for all seven citations. According to Exhibit H, The Citations in Exhibits A through D resulted in a default judgment. The Citations in Exhibits E through G resulted in a “no contest” plea by Mr. Okafo.
- **Exhibit I** – Parking Court Complaint showing 6 counts of parking violations against Jeff A. Okafo. Counts 4, 5 and 6 are for violations on 400 N. Frances Street which is one of the

approved Late Night Vending Areas and the location where Mr. Okafo is known to conduct Late Night Vending with his food vending cart.

- **Exhibit J** – 15 page police report describing two citations issued to Jeff A. Okafo by Madison Police Officer Chandra Dolsen: Citation N168141-1 for Hit and Run contrary to MGO 12.011 adopting Wis. Stat. §346.67(1), and Citation N168142-2 for Operating After Revocation (2nd) contrary to MGO 12.011 adopting Wis. Stat. §343.44. The date of violation for both tickets was January 28, 2010. Exhibit J includes a narrative police report and other materials describing Officer Dolsen's investigation of an accident in a U-haul parking lot where Mr. Okafo was working for another vendor (JD's) and backed JD's vending cart into another vendor's cart (FIB's), causing damage, and Mr. Okafo did not report the accident. The report includes Dolsen's review of a surveillance video showing an individual later identified as Okafo exiting his vehicle, inspecting the FIBS car, and driving away. He did not leave a note or attempt to contact the staff at U-Haul to report the damage. The report also indicates Okafo's Wisconsin driver's license was revoked at the time. It appears that Okafo was driving his personal vehicle for purposes related to street vending (parking another vendor's cart). Mr. Okafo is contesting these citations. The citations are set for trial on July 15, 2010 in Madison Municipal Court.
- **Exhibit K** – 4 pages of information including two police reports describing a citizen (Rosemary Lee) reporting her observation of the Jin's Chicken and Fish trailer being left unattended on January 24, 2010 on the Library Mall with an odor of propane. Exhibit K also includes 2 pages of a Fire Incident Report from the Madison Fire Department for an incident on January 24, 2010 at 500 N. Lake Street, a service call resulting from a citizen complaint about a gas smell coming from a street vendor's LP tank. The gas smell was not present when the fire personnel arrived.

ACA Strange said that he had no further questions for Dolsen.

Questions of Officer Dolsen from Committee members:

Pettaway asked Dolsen if the silver truck in the Hit and Run incident was registered to Okafo. She answered that it was.

After general discussion by the Committee, Dolsen was dismissed.

(2) City's Second Witness – Warren Hansen, Street Vending Coordinator. Hansen was sworn in by Foxgrover. Hansen was asked by Strange to identify two documents. Mr. Hansen testified that these documents were print-out summaries from the city's records, likely from the city Clerk, summarizing two licenses issued by the City, one a Basic Street Vendor License and the other a Late Night Vending License, both expiring on April 14, 2010. Hansen testified that Jeffrey Okafo is identified as the license holder on both documents.

Hansen was asked what other types of city licenses would be required to do the type of street vending that Mr. Okafo does. He listed health department permits for food, a mobile base kitchen license, and mobile cart license, which expire on the last day of June, and which are not within the purview of Mr. Hansen's department.

Committee members' questions for Mr. Hansen:

Ald. Pham-Remmele asked Hansen questions about his job duties as vending coordinator. In answer to questions from the alder, Hansen answered that he has been the vending coordinator since 1998, that he deals with approximately 275-300 vendors each year, that in comparison to those other vendors, Mr. Okafo takes up a disproportionate amount of his time. Ald. Pham-Remmele asked how many previous suspension/revocation actions Hansen could recall, he said there were four: one sidewalk café (former owners of Tutto Pasta on King St.) one mall-concourse food cart vendor (Suong Tran), who is still vending, and Mr. Okafo's license had been suspended on two occasions, for a total of four.

Pettaway asked for clarification of which parties had previously had their licenses suspended. Hansen said that there was one other food cart and one sidewalk café plus two suspensions for Okafo.

Richards asked if a current licensee had to be present in order to operate a food cart. Hansen explained that, for example, if Richard's cousin purchased a street vendor license, her cousin could be hired by Okafo to work in the Jin's Chicken cart for Okafo.

McClendon asked Hansen if other city agencies, such as the Health Dept., could enforce vending violations. Hansen said that the Health Department's authority was limited to enforcing safe food handling practices.

Closing remarks:

Attorney Strange made closing remarks briefly summarizing his case.

Deliberations and Decision-making

1. **Fact-Finding Phase.** The Committee deliberated in open session about the facts presented. A motion was made by Sarah Richards that all the evidence that had been presented clearly showed that there had been violations of City ordinances, seconded by Toriana Pettaway, with a friendly amendment by Ald. Verveer that the committee found that enough evidence had been submitted to the record that each of the allegations contained in the Notice of Hearing were, in the opinion of the committee, accurate to their standard of proof, which is substantial evidence, seconded by Pettaway.

The motion passed by a voice vote at approximately 6:40 p.m.

2. **Public Comment.** There were no registrants and no public comment for the public comment phase allowed prior to the Penalty Phase according to the Vending Oversight Committee's hearing procedures.
3. **Penalty Phase.** The Vending Oversight Committee asked for the City's recommendation. Strange repeated that the City was seeking a 1-year revocation of Jeff Okafo's Basic Street Vendor license, which would also render any Late Night Vending License issued to him revoked. The VOC asked Mainella to describe their options for imposing a penalty, ranging from least to most severe. Asst. City Attorney Mainella read from 9.13(8)(a)4. and informed the VOC of their options. The VOC had questions about their ability to take action against the *business* or *cart*, in addition to the individual vendor, and whether it mattered if the business/vending cart had any health code violations. Attorney Strange said that there were no health code violations pending and

in his opinion, nothing that could be done to stop the *cart* from being operated by other licensed vendors.

Assistant City Attorney Lara Mainella advised the Vending Oversight Committee that under the current structure of section 9.13 and the Late Night Vending section, Basic Street Vending and Late Night Street Vending licenses are issued to the vendor, can be in the name of an individual or a business, but the license is not for the “cart.” Therefore, the penalty of suspension or revocation is imposed upon the individual license-holder, not upon the cart. In this case the license holder is Jeffery Okafo.

Member Toriana Pettaway asked whether the ordinance would allow the committee revoke Mr. Okafo’s individual vending license(s) and place conditions on other operators of his vending cart, to which Mainella answered no and explained that while that is a creative suggestion, the committee should not take any action that could be considered beyond their jurisdiction and jeopardize the validity of their decision-making.

The VOC commented that it appears from Mr. Okafo’s behavior that he knows the VOC cannot take action against his vending cart or business. The Vending Oversight Committee considered the fact that they have already suspended his license for a period of 30 days and 6 months in the past, with no improvement of behavior.

Verveer moved as follows:

“That the VOC exercise the maximum authority that they’re allowed to under Madison General Ordinances, so, I move that we revoke for one year, all licenses that are issued to Mr. Jeffrey Okafo pursuant to section 9.13(8)(a)4. of the ordinances and as part of the motion I’ll just borrow the, very appropriate language suggested in the City’s recommended penalty and that is in light of the previous six-month suspension of Mr. Okafo’s street vending license, his continued unlawful behavior shows a total lack of respect for the laws of the city and state, the work of the Vending Oversight Committee and the decisions of the Madison Common Council the maximum penalty is more than appropriate, more than appropriate here.”

The motion was seconded by Pham-Remmele.

The motion passed unanimously by voice vote.

Verveer made the request that the Street Vending Coordinator and City Attorney’s Office work together to produce the VOC’s report to the Common Council so that it could appear on the next Common Council agenda.

The Hearing concluded and the VOC adjourned at 7:16 p.m.

Recommendation of the Vending Oversight Committee

(As reflected in the above motion):

The Vending Oversight Committee recommends that the Common Council revoke all Street Vending Licenses issued to Jeffrey Okafo for a period of one (1) year.