

DRAFT update after Feb. 23 VOC meeting, for March VOC meeting. ID# 21005
This Draft is for discussion purposes only. The outcome of the discussion may result in a Substitute Resolution being prepared with the approval of the sponsors listed below.

a SUBSTITUTE RESOLUTION _____
authorizing amendments to the “Regulations Governing Vending on the State Street Mall/Capitol Concourse” and “Regulations Governing Vending in High Density Vending Areas” to revise the method of counting years of seniority for Mall/Concourse, Camp Randall, and Langdon Street vending licenses, creating a sabbatical option, changing the tie-breaker process so that it is no longer determined alphabetically, and creating four factors for determining if a Mall/Concourse Food Vendor has lost seniority due to changes in the vending operation.

Drafted by: Lara M. Mainella, Assistant City Attorney

Date:

SPONSOR(S): Thuy and Verveer

REFERRALS: VOC

WHEREAS, Under sec. 9.13(6) of the Madison General Ordinances, the Vending Oversight Committee (VOC) is empowered to promulgate regulations not inconsistent with Sec. 9.13, governing the sale of goods and personally prepared food on the State Street Mall and Capitol Concourse; and

WHEREAS, Under sec. 9.13(7) of the Madison General Ordinances, the VOC is also empowered to promulgate regulations not inconsistent with Sec. 9.13, governing the sale of goods and food in High Density Vending Areas; and

WHEREAS, pursuant to Sec. 9.13 the Common Council must approve the regulations promulgated by the VOC; and

WHEREAS, the regulations are currently published in documents entitled “Regulations Governing Vending on the State Street Mall/Capitol Concourse” and “Regulations Governing Vending in High Density Vending Areas;” and

WHEREAS, at its meetings on April 28, May 26, July 28, October 5, 2010, and in January, February and March of 2011, the VOC promulgated amendments to the Regulations regarding the method of determining seniority for certain licensed vendors;

WHEREAS, said amendments are set forth in this Resolution using underlines and strike-outs to show changes as appropriate;

NOW, THEREFORE, BE IT RESOLVED, that the Common Council approve the following amendments to the “Regulations Governing Vending on the State Street Mall/Capitol Concourse” and the “Regulations Governing Vending in High Density Vending Areas” recommended by the Vending Oversight Committee:

1. Amending the REGULATIONS GOVERNING VENDING ON THE STATE STREET MALL/CAPITOL CONCOURSE, Section II., FOOD AND CRAFT VENDING SITES, section F.1.a., and Section X., SATURDAY VENDING SITE ASSIGNMENT, as follows:

F. Allocation and Assignment of Vending Sites

1. Arts & Crafts. All Mall/Concourse Arts and Crafts vending sites shall be numbered and designated as Daily or Saturday-only sites, as shown on Exhibit 1. All Arts & Crafts vending sites (Daily and Saturday) are ~~and~~ available to be reserved, for an additional reservation fee, as ~~regular/reserved~~ assigned craft sites for the annual licensing fee by vendors purchasing an annual Arts & Crafts license. The annual license fee and additional reservation fees are described in sec. 9.13(6)(h). ~~established by ordinance.~~

a. Reserved Assigned Sites, Seniority. ~~Sites will be assigned to craft vendors based upon a chronological rank ordered seniority list that begins with the date each vendor purchased his/her first Mall Concourse Craft Vendor license. Sites shall be assigned on the basis of seniority. Vendors requesting a reserved Arts and Crafts vending site (Daily or Saturday) will be assigned a site according to their seniority. Site assignments for Arts and Craft vendors shall be by consecutive years of seniority.~~

Seniority shall be calculated by counting the number of consecutive, uninterrupted vending seasons that the vendor has purchased and used a Mall/Concourse Arts and Crafts Vending License (of any duration), counting backwards from the present. The vending season is from April 15 to April 14.

Sabbaticals. However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season) without losing ~~consecutive years of seniority, but that year will not be counted toward the vendor's one (1) year will be subtracted from the vendor's total number of years of seniority.~~

If a vendor takes more than two (2) sabbaticals in a three (3) year period, the vendor will lose all years of seniority and upon applying in the future for an Arts and Crafts vending license, that vendor will begin with zero years of seniority and placed at the bottom of the seniority rank list. upon his/her next application for a site assignment.

(question – is the intent to cause the vendor to lose seniority if they take 2 sabbatical years in a 3 year period, or is the intent to allow 2 sabbaticals within 3 years with no consequence? (other than having 2 years subtracted from the total) If so, can they take two sabbaticals in a row? Do we want the word “more” to be in there? need to clarify the desired result.

It doesn't make sense any more to specifically allow 1 sabbatical, because the next section (2 in 3 years) allows 2 sabbaticals. We have moved away from the concept of “consecutive, uninterrupted years” and instead a vendor earns 1 year of seniority for each year they vend, and they can take up to 2 sabbaticals every 3 years without dropping to the bottom of the list. They aren't penalized for taking up to two years off every 3 years, other than having those years not counted toward seniority. I need to be clear if that is what is intended. thanks.

Determining Seniority for Shared Arts/Crafts Vending License. If two individuals share a vending license as authorized by sec. 9.13(6)(e)1.a., ~~the average number of years of seniority of both individuals shall be used to determine seniority for the pair.~~ seniority will be calculated as follows:

1. when applying for a reserved Arts/Crafts vending site assignment (Daily or Saturday) the seniority of the more senior vendor will be used to determine the pair's ranking.
2. when using an unassigned/unreserved site under section F.1.b., the seniority of the vendor who is present on a particular day (Daily or Saturday) will determine the seniority ranking for purposes of choosing an unassigned site that day.
3. when moving into a reserved site that is unoccupied by the assigned vendor for the day under F.1.b., the seniority of the vendor who is present on that day (Daily or Saturday) will be used to determine seniority ranking for purposes of moving into the unoccupied site that day.

Tie-Breakers: ~~If one or more than one vendor share the same number of years of seniority, purchased a license on the same date,~~ rank order will be determined by the date and time of day the license is created, or a coin toss conducted by the Vending Coordinator or designee if the date and time of the license is not available. alphabetically by the last name of the vendor or the title of the corporation, cooperative or partnership holding the license.

Rank-Ordered List: Each vending season, a rank-ordered list will be established with the vendor with the highest seniority ranked number 1, and so on. Each vendor will be assigned a number to indicate their rank. Each vendor shall indicate three site preferences on their Application for Mall/Concourse Craft Vendor License. The Director of the Department of Planning and Development, or designee, shall assign sites beginning with the highest-ranking vendor assigned to his/her first preference, the next-highest ranking vendor assigned to his/her first preference, or if that site has already been assigned, his/her next-highest preference, and so on; until all qualified applicants have received an assigned site or all sites have been filled.

b. “Floater” Procedure:

i. **Reserved Daily Sites:** The assigned seniority rank number will also be used to determine which vendor has priority to occupy another vendor's reserved Daily unoccupied site, if the assigned vendor does not occupy the site on a particular day. If a reserved craft vendor site in the 400, 500 or 700 blocks of State Street (i.e. Daily sites) remains unoccupied by ~~10:00~~ 11:00 a.m., another craft vendor may occupy that site for the day using the ~~priority~~ seniority system established above.

ii. **Unassigned Daily craft vendor sites** that have not been reserved with a reservation fee may be occupied on a day to day basis by licensed arts & craft vendors will retain on a first come, first served basis. ~~status~~ The seniority system

~~in section II.F.1.a. will be used to determine which vendor has priority to occupy an unassigned site, except that a vendor who has paid the reservation fee for a reserved with a regular assigned site who wishes to move into an unassigned or unoccupied site will have priority, as determined above, over less-senior craft vendors or any craft vendor without a regular (reserved) assigned site.~~

iii. **Unoccupied or Unreserved Saturday Vending Sites.** If a craft vendor holds a reserved/assigned Saturday site and does not occupy his or her assigned site by 7:30 a.m., another licensed craft vendor may occupy the unoccupied site instead of his/her assigned site. If more than one craft vendor is interested in the unoccupied site, the vendor with the most seniority, as determined in sec. II.F.1.a. above, may occupy the site. The same procedure shall apply to craft vendors wishing to occupy unreserved/unassigned Saturday sites. Additionally, Craft vendors may occupy unassigned Food vendor sites with the previous written approval of the Director of the Department of Planning and Development, or designee.

~~Any craft vendor without a regular assigned site may arrange to use an unassigned craft site on a weekly basis during the vending season by notifying the Street Vending Coordinator or designee of the Director of Planning and Development by each Friday at 12:00 p.m., of the site which the vendor will occupy for the next seven days.~~

~~In addition, the Director of Planning and Development, or designee may assign any unassigned craft vending sites during peak periods, in the event he/she deems such additional assignments desirable for the orderly conduct of vending on the Mall/Concourse.~~

3. Amending the REGULATIONS GOVERNING VENDING ON THE STATE STREET MALL/CAPITOL CONCOURSE, Section X, Saturday Vending Site Assignment, Paragraphs B., C., D., and E., as follows:

- B. Licensed vendors wishing to reserve one of these sites will make a written application in letter form no later than April 15, designating which site is desired and providing alternates. If there are any assignable/reservable sites remaining after that date, they may be assigned (or occupied) on a first come, first served basis.
- C. Subsequent to April 15, the Director of Planning and Development, or designee and the Chair or designee of the VOC will assign the Saturday food sites and the Saturday craft sites for which a reservation is requested, using the methods below. The decision of the VOC and Chair shall be final and not subject to the appeal procedures in Chapter 9 of the Madison General Ordinances. The Director of Planning and Development or designee may establish additional unassigned (unreserved) Saturday food and craft sites, in addition to those set forth in Sec. II. A., as necessary to accommodate vending requests and consistent with the safe and orderly movement of traffic and pedestrians. Any such sites shall be

designated on the Mall/Concourse Vending Site map, Exhibit I ~~and shall only become effective when amendments to these regulations have been adopted by the Common Council.~~ All carts shall be oriented on the sites so as to maximize safety and minimize crowding and shall be reoriented at the request of the Director of Planning and Development, or designee if necessary, for those reasons.

1. Food Vendor Sites. Saturday food vending sites shall be assigned according to the procedures set forth in sec. V.
2. Craft Vendor Sites. Saturday craft vendor sites will be assigned using the procedures rank ordered seniority list described in sec. II. E. F. 1.

D. The Mall/Concourse vending license of each vendor approved for a reserved Saturday vending site shall designate the specific site that has been reserved assigned. This license must be prominently displayed during all hours of Saturday vending.

E. ~~Unoccupied or Unassigned Saturday Vending Sites. Craft vendors may occupy unassigned food vendor sites with the previous written approval of the Director of the Department of Planning and Development, or designee. Additionally, if a craft vendor to whom a Saturday site has been assigned does not occupy the assigned site by 7:30 a.m., another licensed craft vendor for whom a site has been assigned may occupy the unoccupied site instead of his/her assigned site. If more than one craft vendor is interested in the unoccupied site, the vendor with the most seniority, as determined in sec. X.C.2 above, may occupy the site. Food vendors may occupy unassigned or unoccupied craft vendor sites that do not provide electricity, providing that the food vendor and all apparatus fit inside the craft vending site dimensions and the food vendor has received prior written approval from the Director of the Department of Planning and Development, or designee. (reserved for future use.) (move to section II.F.1.)~~

2.3. Amending the REGULATIONS GOVERNING VENDING ON THE STATE STREET MALL/CAPITOL CONCOURSE, Section IV., FOOD VENDING REVIEW JUDGING GUIDELINES AND SITE ASSIGNMENT CRITERIA, section A.1., as follows:

IV. FOOD VENDING REVIEW JUDGING GUIDELINES AND SITE ASSIGNMENT CRITERIA

A. Initial Application Review.

1. Seniority. Seniority points are determined by the number of continuous vending years or parts thereof, up to a maximum total of seven (7) years, that the individual vendor or primary person has been listed on the same Mall/Concourse vending license and affiliated with the same vending cart operation at any location. Seniority accompanies a specific food vendor in a specific cart or tent and may be used as a Food Cart Review tiebreaker.

Seniority points are determined by the number of consecutive, uninterrupted vending seasons that the vendor has purchased and used a Mall/Concourse Food Vendor License (of any duration) counting backwards from the present, or parts thereof, up to a maximum total of seven (7) years.

How to calculate Seniority for Mall/Concourse Food Vendors:

Not purchasing the license, forfeiting a site assignment or forfeiting the license for the vending season, or failing to vend at all during the vending season will count as a year off. However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season) without losing consecutive years of seniority, but that year will not be counted toward that vendor's total years of seniority. ~~one (1) year will be subtracted from the vendor's total seniority.~~ If a vendor takes more than two (2) sabbaticals in a three (3) year period, 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. (same question as w/ crafts)

In addition, a Mall/Concourse Food Vendor will lose all years of seniority if all of the four following changes occur: *(must these changes be simultaneous?)*

- The name of the food cart or food tent, as specified on the application and resulting license, has changed.
- The owner of the food cart or food tent, as specified in the application and resulting license, has changed.
- A change in the overall design and appearance of the food cart or food tent (other than changes resulting from maintenance or repairs.)
- The menu has changed. (This does not include a "minor menu change" for which approval has been granted under sec. XII.D. This also does not include a menu change that is approved through the Food Cart Review process, unless that change is also accompanied by a change in all of the other factors listed in this section.)

Seniority is not transferrable. Seniority ~~and~~ may be used as a Food Cart Review scoring tiebreaker. If more than one Mall/Concourse Food Vendor share the same number of years of seniority, rank order will be determined by the date and time of day the license is created, or by a coin toss conducted by the Vending Coordinator or designee if the date and time of the license is not available.

4. AMENDING THE REGULATIONS GOVERNING VENDING IN HIGH DENSITY VENDING AREAS, Section VI., Allocation And Assignment Of Vending Sites, Subsection A, Camp Randall High Density Vending Site Assignment, as follows:

"A. Camp Randall High Density Vending Site Assignment. ~~Sites shall be assigned on the basis of seniority.~~ Site assignment for the Camp Randall High Density Area shall be determined by seniority.

How to calculate Seniority for Camp Randall High Density Vendors:

Seniority shall be calculated by counting the number of consecutive, uninterrupted vending seasons that the vendor purchased and used a Camp Randall High Density Vending License (of any duration), counting backwards from the present. Not purchasing the license or failing to vend at all during the Camp Randall football vending season will count as a year off. (with warren's suggestion to move away from the requirement of consecutive years, we don't need this anymore) However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season or failing to vending at all during the season) without losing consecutive years of seniority, but one (1) year will be subtracted from the that year will not be counted toward the vendor's total seniority. If a vendor takes more than two (2) sabbaticals in a three (3) year period, 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. (same question as crafts)

Sites will be assigned based upon a chronological rank-ordered seniority list with the vendor with the most years of seniority ranked number 1, and so on. that begins with the date each vendor first purchased a High Density Vending License.

If one or more than one vendor purchased a license on the same date, share the name number of years of seniority, rank order will be determined by the date and time of day the license is created, or by a coin toss conducted by the Vending Coordinator or designee if the date and time of the license is not available. alphabetically by the last name of the vendor or the title of the corporation, cooperative or partnership holding the license. Each vendor will be assigned a number to indicate their rank. Each vendor shall indicate three (3) site preferences on their Application for High Density Vending License using the number or letter designating the sites as indicated on the most recent Camp Randall High Density Vending Area map. The Director of the Department of Planning and Development, or designee, shall assign sites beginning with the highest-ranking vendor assigned to his/her first preference, the next highest ranking vendor assigned to his/her first preference, or if that site has already been assigned, his/her next-highest preference, and so on; until all qualified applicants have received an assigned site. When all sites have been assigned by seniority, a rank-ordered waiting list shall be created based on the date that additional applications were received by the departmental designee. There shall be a separate waiting list for Goods vendors and Food vendors. Any site that becomes available after initial site assignments have been made shall be offered to the currently-licensed high density vendors according to their rank order, and/or assigned to the next applicant on the appropriate waiting list (if any).

1. Camp Randall High Density Vendors must purchase their HDV license no later than the Friday of the week before the week of the first home UW football game of the season. Failure to purchase the license by that date will result in the vendor forfeiting their site assignment and being placed at the bottom of the waiting list (if any). Forfeited sites may be offered to the other currently licensed Camp Randall high density vendors according to their rank order, and/or the next applicant on the waiting list."

5. **AMENDING THE REGULATIONS GOVERNING VENDING IN HIGH DENSITY VENDING AREAS, Section VI., Allocation And Assignment Of Vending Sites, paragraph C.1.a. as follows:**

“C. Langdon Street High Density Vending Site Assignment:

1. Langdon Street High Density Vending Area.

- a. Site Assignment. Site assignment for the Langdon Street High Density Area shall be determined by consecutive years of seniority. Sites will be assigned based upon a chronological rank-ordered seniority list that begins with the date each vendor first purchased a High Density Vending License.

How to calculate Seniority for Langdon Street High Density Vendors:

Seniority shall be calculated by counting the number of ~~consecutive, uninterrupted~~ vending seasons that the vendor has purchased and used a Langdon Street High Density Vending License (of any duration) counting backwards from the present. ~~Not purchasing a license or failing to vend at all during the vending season will count as a year off.~~ However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season or failing to vend at all during the season) without losing consecutive years of seniority, but that year will not be counted toward ~~one (1) year will be subtracted from~~ the vendor’s total seniority. If a vendor takes ~~more~~ than two (2) sabbaticals in a three (3) year period, 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. (same question as crafts)

If ~~one or more than one~~ vendor purchased a license on the same date, share the same number of years of seniority, rank order will be determined by the date and time of day the license is created, or by a coin toss conducted by the Vending Coordinator or designee if the date and time of the license is not available. ~~alphabetically by the last name of the vendor or the title of the corporation, cooperative or partnership holding the license.~~ Each vendor will be assigned a number to indicate their rank. Each vendor shall indicate three (3) site preferences on their Application for High Density Vending License using the number or letter assigned to each site as indicated on the most recent Langdon Street High Density Vending Area map. The Director of the Department of Planning and Development, or designee, shall assign sites beginning with the highest-ranking vendor assigned to his/her first preference, the next-highest ranking vendor assigned to his/her first preference, or if that site has already been assigned, his/her next-highest preference, and so on.”

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