

24764 - BODY

DRAFTER'S ANALYSIS: Section 10.25(1) currently prohibits the placement of articles on the sidewalk and terrace. The list of prohibited items includes "any cask, box, crate, wood, stone, plank, boards, goods, wares, merchandise, ashes, bottles, cans or other substances or materials." This has the effect of prohibiting the use of tables to distribute literature or other expressive items on city sidewalks. The street vending ordinance (Sec. 9.13) prohibits on-street sales without a street vending license. In the areas surrounding the Capitol and State Street, a street vending license is only available for homemade food and handcrafted items, and vending can only be conducted from assigned sites. Food vendors compete for a site through the annual, juried, food cart review process. Craft vendors choose from among a limited number of sites. The sites are established by the Vending Oversight Committee. Street vending in other parts of the city is also limited to assigned sites only and certain days of the week (i.e. Southeast Campus, Camp Randall High Density, UW Game Day vending areas.) This ordinance creates a new process so that persons wishing to use a table to hand out literature or other noncommercial materials, collect signatures or petitions, or vend expressive items, can do so and not violate Sec. 10.25 or the street vending ordinances. Specifically, this ordinance would: (1) clarify the current prohibition against placing articles on the sidewalk; (2) create a new "T" permit to allow the use of a table to display and disseminate information about political, philosophical, religious, ideological or any other noncommercial messages or causes, petition for signatures or seek donations for the same; (3) create a new "E" permit to allow vending of non-food expressive items that are inextricably intertwined with a political, philosophical, religious, ideological or other noncommercial cause, such as newspapers, books, recordings, bumper stickers, buttons, hats, T-shirts, posters or signs that display a written noncommercial message; (4) create designated sites for T and E permits in the regulated vending areas such as the Mall/Concourse, Southeast Campus, Camp Randall High Density and UW Game Day vending areas; (5) allow T and E permits for tabling in unregulated vending areas throughout the city; and (6) create a new "M" permit for mobile vending of "expressive items" city-wide. The "M" permit is needed in the Mall/Concourse vending area where currently, street vending can only occur from assigned sites. This ordinance sets forth the City's substantial governmental interests in protecting traffic and pedestrian safety as well as visual aesthetics of the city streetscape. These new permits will be available for a nominal fee on a daily, monthly or annual basis and will be administered by the Vending Coordinator. This ordinance creates administrative procedures for the permits, eliminates Sections 10.25(1) and (2), incorporating some of Sec. 10.25(1) into new Sec. 9.53(1), and creates bail deposits and enforcement authority for violations of new Sec. 9.53.

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

1. Section 9.53 entitled "Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending" of the Madison General Ordinances is created to read as follows:

"9.53 EQUIPMENT PLACEMENT ON SIDEWALKS AND TERRACES, PERMITS FOR INFORMATION TABLES AND EXPRESSIVE STREET VENDING.

- (1) No person shall place, set up, construct, or allow to remain a table, easel, case, crate, box, stand, tent, rack, cart, or any other equipment, display or articles of any kind on a public sidewalk or sidewalk area, terrace, street or highway right-of-way, except temporarily while actively loading or unloading such items, or unless a T permit or E permit has been issued under this section, or unless such equipment placement is authorized, by permit or other authorization, elsewhere in these ordinances.
- (2) Purpose and Findings. The sidewalks, sidewalk areas and terraces (collectively, "sidewalks") of the City of Madison are traditionally held for use by pedestrians and bicyclists in the ordinary way, and limited use for street vending, special events, and holders of encroachment permits. The streets are held for use by motorists and vehicles. Due to the high volume of pedestrian traffic including

students, workers, shoppers and tourists, the sidewalks of State Street and the Capitol Concourse (the "Mall/Concourse Area" as defined in Sec. 9.13(6)(a)) and sidewalks adjoining property of the University of Wisconsin have been historically and traditionally used as a place for public expression, as well as sought-after locations for licensed street vendors, sidewalk cafes and merchant vendors as permitted by Sec. 9.13, MGO. The City of Madison has developed a regulatory system for street vendors in the Mall/Concourse Area to preserve its interests as stated in Sec. 9.13(6)(c) and has limited and assigned street vendor locations in other designated vending areas throughout the city, for the reasons stated in Sec. 9.13.

The City finds that the unregulated placement of equipment on the sidewalks of the City impedes traffic and pedestrian safety, interferes with the City's ability to maintain unobstructed pedestrian walkways, is unfair to licensed city vendors, and negatively affects the aesthetics of the permanent streetscape. Additionally, in the Mall/Concourse Area, such unregulated placement of equipment adversely affects the character and unique historical and business concerns of that area, diminishing the value of licenses held by street vendors who compete and pay for assigned vending sites, as well as sidewalk café and merchant vending licenses, and negatively affects the aesthetics of the permanent downtown streetscape that has been carefully designed and maintained by the City.

The City also finds that unregulated placement of equipment on the sidewalks of the Southeast Campus, Camp Randall High Density and UW Football Game Day vending areas creates a hazard for pedestrian and traffic safety due to the high volume of pedestrian traffic in those areas, and adversely affects the aesthetics of the streetscape which is designed primarily for efficient pedestrian movement and is largely free of obstructions.

The City also recognizes that persons not meeting the criteria for street vending licenses may wish to express a message, seek donations, hand out literature or sell expressive items from a location on the sidewalk using a table and other equipment. The City also recognizes that persons may wish to sell expressive items on foot in these areas.

The City finds that it can address its substantial interests in pedestrian and traffic safety and visual aesthetics by creating a system of assigned sites for the use of tables for expressive activities in the Mall/Concourse and other special vending areas mentioned above, and a permit for all other areas of the City.

The City also finds that its interests in traffic safety, visual aesthetics, and in preserving unique business, tourist and historical concerns can be protected while permitting a limited number of sites for information tables and for sales of expressive items in these areas, as well as permitting mobile sales of expressive items. This ordinance is adopted to create reasonable time, place and manner restrictions on the placement and use of equipment and on mobile sales of expressive items on city sidewalks for expressive, free-speech purposes.

(3) Definitions.

Camp Randall High Density Vending Area. The geographical vending area defined in Sec. 9.13(7)(b)2. T and E permits issued under this ordinance are only valid in this vending area on days when a Football Season License is valid, as described in Sec. 9.13(7)(e)2.

Daily Site. A T or E site that is designated for use seven (7) days per week, as distinguished from a Saturday-only site.

Expressive Item. An item that is inextricably intertwined with a political, philosophical, religious, ideological or other noncommercial message or cause.

Examples of expressive items that may be sold in an E site include pamphlets, newspapers, books, or other publications; DVDs or other recordings; and bumper stickers, buttons, pins, patches, hats, T-shirts, posters or signs displaying a written noncommercial message. An item is not considered

inextricably intertwined with a noncommercial message if the item has an independent function or utility despite the inclusion of the message, except that for purposes of this definition, items of apparel such as hats or T-shirts bearing a written noncommercial message will be considered expressive items.

Regulated Vending Areas. For purposes of this ordinance, a Regulated Vending Area is a geographic street vending area established in Sec. 9.13 where street vending is restricted by site location, site assignment, or type of item sold.

Southeast Campus Vending Area. The geographical vending area defined in Sec. 9.13(10).

State Street Mall/Capitol Concourse Vending Area or "Mall/Concourse" Vending Area. The geographical vending area defined in Sec. 9.13(6).

Street Vending shall have the definition given in Sec. 9.13(1).

Street Vending Coordinator. The designee of the Director of the Department of Planning and Community and Economic Development having charge of administering Sec. 9.13, License for Selling on Public Streets, also known as the "Vending Coordinator," or his/her designee.

UW Football Game Day Vending Area or "Game Day" Vending Area. The geographical vending area defined in Sec. 9.13(11). This area is only in effect on days when the University of Wisconsin has a home football game at Camp Randall Stadium as set forth in Sec. 9.13(11)(b).

(4) Table Permits ("T" Permits).

(a) Activities Permitted in a T Site. A T permit holder may display and disseminate information such as literature or pamphlets about political, philosophical, religious, ideological or any other noncommercial messages or causes, petition for signatures or seek donations for the same with the use of a table and equipment described in Sec. 9.53(6)(c), in a T Site. Sales or street vending, as defined in Sec. 9.13(1), are strictly prohibited in a T Site. T permit holders may accept donations in exchange for non-food items of nominal value, but no minimum donation shall be required. The permittee may limit the number of items given away to one (1) per person, per day. T sites shall not be used for performances or preparation of on-site artwork.

(b) T Sites. The Vending Coordinator shall establish no fewer than ten (10) T daily sites within the State Street Mall/Capitol Concourse Vending area plus additional Saturday-only sites; no fewer than three (3) daily T sites in the Southeast Campus Vending Area, and no fewer than eight (8) T sites in the Camp Randall High Density vending area, for the purposes described in sub (a). All T sites shall be indicated on an official map maintained in the Office of Business Resources for such purposes. The holder of a valid T permit may use any unassigned/unoccupied vending site in the Game Day Vending Area for T-permit activities, on days when that vending area is activated. T sites shall be either 4 feet by 4 feet (4' x 4') or 4 feet by 8 feet (4' x 8') and shall meet all requirements for vending equipment placement found in Sec. 9.13(4) except those provisions that are less strict than this ordinance, in which case the more strict shall apply.

(5) Tables with Expressive Vending ("E" Permits.)

(a) Activities Permitted in an E Site. An E permit holder may participate in all of the activities permitted with a T permit, plus vending (sales) of only non-food, expressive items in an E site, with the use of a table and equipment described in Sec. 9.53(6)(c). An "expressive item" is defined as an item that is inextricably intertwined with a political, philosophical, religious, ideological or other noncommercial message or cause. Examples of expressive items that may be sold in an E site include pamphlets, newspapers, books, or other publications; DVDs or other recordings; and bumper stickers, buttons, pins, patches, hats, T-shirts,

posters or signs displaying a written noncommercial message. An item is not considered inextricably intertwined with a noncommercial message if the item has an independent function or utility despite the inclusion of the message, except that for purposes of this section, items of apparel such as hats or T-shirts bearing a written noncommercial message may be sold from an E site. An E site may not be used for performances or to prepare artwork.

- (b) E Sites. The Vending Oversight Committee (VOC) shall establish no fewer than: four (4) daily E sites within the Mall/Concourse Vending area plus additional Saturday-only sites, no fewer than two (2) daily E sites in the Southeast Campus Vending Area, and no fewer than two (2) E sites in the Camp Randall High Density Vending area for the purposes described in Sec. 9.53(5)(a) which may include the vending of expressive items. E sites in these vending areas shall be indicated on an official map maintained in the Office of Business Resources for such purposes. The holder of a valid E Permit may also use any unassigned/unoccupied vending site in the Game Day Vending Area for E-permit activities on days when that vending area is activated. E-sites shall be either 4 feet by 4 feet (4' x 4') or 4 feet by 8 feet (4' x 8') and shall meet all requirements for equipment placement found in Sec. 9.13(4) except those provisions that are less strict than this ordinance, in which case the more strict shall apply. The VOC may delegate the authority to establish these sites to the Vending Coordinator.
- (6) T and E Site Assignment and Permit Procedure.
 - (a) Site Assignments. The Vending Coordinator shall assign T sites to T permit holders, and E sites to E permit holders. Sites will be assigned on a first come, first served basis, using the date and time of day that the T or E permit was first issued during that vending year. An annual permit holder will receive a site assignment for the duration of the vending year. Monthly and daily permit holders occupy sites on a daily first come, first served basis.
 - (b) Moving Into Unoccupied Site. If an assigned annual T or E site remains unoccupied as of 11 a.m. Sunday through Friday or 8:00 a.m. on Saturday, another T or E permit holder may move into the unoccupied site for the day.
If requests for T or E permits on a specific day exceed the maximum number of corresponding T or E permit sites, the Vending Coordinator may assign a permit holder to an available site of the other type. If all T and E sites are full, the Vending Coordinator may create additional temporary T or E site(s) for the day, consistent with the location requirements for street vendors in the vending area in question, as set forth in Sec. 9.13. No T or E site may displace a licensed city street vendor.
 - (c) Equipment Permitted in a T or E Site. One table of sturdy construction that fits within the perimeter of the T site, one chair in a four by four (4x4) foot-site or two chairs in a four by eight (4x8) foot-sites, a securely-fastened table cloth or covering, and not more than one (1) container that fits entirely beneath the table may be used in a T or E site. There shall be no electrical connection, no attention-getting devices, and no signage except one eight and a half by fourteen (8 ½ x 14) inch sign, securely fastened to the table, identifying the permittee or its cause.
- (7) The T or E site must be attended at all times by the holder of the permit or another representative of the group holding the permit.
- (8) No T or E permit holder shall displace or interfere with a licensed city street vendor or street vending site.

- (9) Hours. The hours for T and E site permit activities shall be the same as for street vending in the vending area in question, as set forth in Sec. 9.13.
- (10) T and E Permit Application, Fees. Application for a T permit or E permit shall be filed in-person or electronically with the Vending Coordinator or in-person at the City Clerk's Office, on a form suitable for this purpose, and shall contain the name, address, phone number and email address of the applicant, and any other information as the City may require. Permits shall be issued by the Vending Coordinator and shall be conspicuously displayed at the T or E site. Annual permits for an assigned site shall include the site name/number on the permit. All permit fees shall be made to the City Treasurer.
- (a) T Permit Fees.
1. T Site Annual - \$25. Annual permits shall be issued on the fifteenth (15th) day of April each year, or thereafter when applied for, and shall expire on the fourteenth (14th) day of April following its issuance.
 2. T Site Monthly - \$15. Such license shall be issued for thirty (30) days from the date the permit is issued and shall set forth the date of expiration.
 3. T Site Daily - \$5. A daily T site permit is valid for the date it is issued, during applicable street vending hours for the vending area in question.
- (b) E Permit Eligibility and Fees.
To be eligible for an E Permit the applicant must be an individual or a not-for-profit organization.
1. E Site Annual - \$50. Annual permits shall be issued on the fifteenth (15th) day of April each year, or thereafter when applied for, and shall expire on the fourteenth (14th) day of April following its issuance.
 2. E Site Monthly - \$30. Such license shall be issued for thirty (30) days from the date the permit is issued and shall set forth the date of expiration.
 3. E Site Daily - \$10.
- (c) Change of Contact Information. A holder of a monthly or annual T or E permit shall inform the Vending Coordinator of any change of address or other contact information from that given on the application for the permit, if the change occurs during the time period for which the permit was issued.
- (11) City-Wide T and E Permits. The holder of a valid T or E permit may use the equipment and conduct the activities authorized by those permits in locations outside the Mall/Concourse, Southeast Campus, Camp Randall, High Density, and Game Day Vending Areas without reserving a site. A holder of a T or E permit may conduct T and E permit activities wherever vending is authorized by a Basic (city-wide) Street Vending license under Sec. 9.13(4) and shall be subject to the provisions of that subsection, except those that are less strict than this ordinance, in which case the more strict provision shall apply. The hours for city-wide T and E permit activities are the same as for city-wide Basic Street vending under Sec. 9.13(4).
- (12) "M" Permit for Mobile Sales of Expressive Speech Items.
- (a) An M permit is available solely for mobile sales of Expressive Items with limited or no equipment. Any equipment carried by the M permit holder must be completely mobile, designed for and capable of being easily carried by the permit holder. No table, stand, bicycle, conveyance or cart of any size may be used with an M permit. M permits are intended only to allow the mobile vending of expressive items that can be carried by hand.

- (b) M Permit Locations, Hours. The holder of an M permit may conduct activities authorized by that permit within a Regulated Vending Area during the hours when street vending is permitted in the vending area in question. M permit holders shall conduct M permit activities at least ten (10) feet from any occupied street vending site, sidewalk café, merchant vending site, T-site or E-site. Outside the Regulating Vending Areas, an M permit holder may be located wherever a holder of a Basic (city-wide) Street Vending license is authorized to be under Sec. 9.13(4), however there shall be no equipment placed on the sidewalk, terrace or street, tree, plantings or any other public amenity and if there is a conflict in provisions between this ordinance and 9.13(4), the more strict shall apply. The hours for city-wide M permit activities are the same as for Basic (city-wide) Street Vending under Sec. 9.13(4).
 - (c) M Permit Application, Fees, Eligibility. To be eligible for an M Permit the applicant must be an individual or a not-for-profit organization. M permits are issued on an annual basis, from April 15 to April 14, for a fee of five dollars (\$5) per person, payable to the City Treasurer. Applications may be made in person or online with the Vending Coordinator on in-person at the City Clerk's office on a form designed for this purpose. The application shall include the same information as required for an E permit.
- (13) Exclusive Use/Permit Invalidation Procedures. T, E and M permits are subject to the exclusive use and invalidation procedures applicable to street vending licenses set forth in Sec. 9.13(6)(k).
- (14) (a) Permit Suspension and Revocation Procedures. A T, E, or M permit issued under this section may be suspended or revoked for a violation of Sec. 9.53 or for any of the reasons listed in Sec. 9.13(8) and following the procedures set forth in Sec. 9.13(8).
- (b) Permit Activities While Suspended or Revoked Prohibited. No person or organization whose T, E or M permit has been suspended or revoked shall participate in the activities for which the permit in question is required by this ordinance while that permit is suspended or revoked. Any such violation shall be punishable by forfeiture under Sec. 9.53(15) and this penalty shall be in addition to any other penalty or consequence available under these Ordinances.
- (15) Enforcement, Penalty. The Vending Coordinator and Director of Planning and Community and Economic Development are authorized to enforce this ordinance. Any person violating any provision of this ordinance, upon conviction thereof, is subject to a forfeiture of not less than ten dollars (\$10) and not more than two-hundred dollars (\$200) for each separate violation, and all applicable court costs and fees. Each day or portion thereof that a violation continues shall be considered a separate offense."

2. Section 10.25 entitled "Merchandise, Etc., Not To Be Placed On Sidewalk Or Terrace" of the Madison General Ordinances is amended to read as follows:

"10.25 MERCHANDISE, ETC., NOT TO BE PLACED ON SIDEWALK OR TERRACE.

- (1) ~~Unlawful to place Articles on Sidewalk.~~ Except as permitted in other provisions of these ordinances, no person shall place or deposit on any sidewalk or terrace or in any roadway any cask, box, crate, wood, stone, plank, boards, goods, wares, merchandise, ashes, bottles, cans or other substances or materials. Reserved for Future Use.

(2) ~~Merchandise Not to be Left on Sidewalk. It shall be lawful, however, for any person to place and leave for a period not exceeding two (2) hours of the twenty-four (24) on the outer edge of the sidewalk in front of his store or building, dry goods, wares or merchandise for purposes of loading and unloading, such exception to be applicable only to premises in business districts, in actual use for merchandizing purposes.~~ Reserved for Future Use.

(31) Planting of Shrubbery on Terraces Prohibited. No person shall plant or maintain or cause to be planted or maintained on any terrace between the sidewalk and curb on any street in the City of Madison any plant or shrub in excess of twenty-four (24) inches in height or within a distance of twenty-four (24) inches from the back of the curb unless necessary to control erosion of the soil. Any plants or shrubbery planted or maintained on any terrace contrary to the provisions of this ordinance shall be removed. The enforcement of this ordinance shall be under the supervision of the Police Department and the Building Inspection Division of the Department of Planning and Community and Economic Development.

Upon default of any person ordered to remove said plants or shrubbery, the Department of Planning and Community and Economic Development may cause said plants or shrubbery to be removed. The cost of removal shall be assessed against the lot adjoining the terrace upon which the plants or shrubbery were located as provided in Section 28.04(12)(e)4. of the Madison General Ordinances. Prosecution under this section shall not bar the City from causing the plants or shrubbery to be removed, nor shall the City's removal of the plants or shrubbery bar prosecution hereunder.

3. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by deleting, creating and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Placing Articles on Sidewalk	10.25(1)	\$100
T or E Permit violation.	9.53	\$50
<u>Placing articles/equipment on sidewalk, terrace or roadway.</u>	9.53(1)	\$100
M Permit violation.	9.53(12)	\$25"

4. Subsection (4) entitled "Issuance of Citations" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by amending therein the following:

"Enforcement Official Title	Ordinance Chapter or Section and
--------------------------------	----------------------------------

Director of the Building Inspection Division of the Department of Planning and Community and Economic Development or designee.

Section 7.55, Outdoor Wood Boilers Prohibited; Section 8.15, Regulating Private Use of Greenways and Park Lands, and the Southwest Bike Path; Section 9.13, License for Selling on Public Streets; Section 9.25, Licensing of Landlords of Chronic Nuisance Properties; Section 9.53, Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending; Section 12.128(14), Off-Driveway Parking; Section 12.145(1)(d), No Street Vending from Parking Meter; Section 36.30, Cable TV Connections; Chapter 22, Consumer Protection and Weights and Measures; Section 23.29, Noxious Weed Control; Section 24.08, Noise Control Regulation; Chapters 10, 18, 19, 27, 28, 29, 30, 31, 37; Section 33.24 (Urban Design Commission,) and Section 33.19 (Landmarks Commission).

Superintendent of Parks or her/his designee, and Park Rangers

Section 8.15, Regulation of Private Use of Greenways, Park Lands, and the Southwest Bike Path; Section 8.16, Unauthorized Vehicles on Public Lands; Section 8.17, Vending in Public Parks; Section 8.185, Watercraft and/or Other Boating Equipment Storage on City Property Regulated; Section 8.19, Animals Prohibited in Certain Areas; Section 8.215, Lake Access Permits; Section 8.26, Temporary Structure Prohibited without Permit; Section 8.36, Play Golf on City Lands Restricted to Golf Courses; Section 8.42, Feeding Birds on Public Property Prohibited; Section 9.13, License for Selling on Public Streets; Section 9.53, Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending; Section 10.056, Street Use Permit; Sections 10.18(1) and (6), garbage containers on terrace when prohibited.

Director of Economic and Community Development Division or his/her designee.

Sec. 9.13, License for Selling on Public Streets; Sec. 10.32, Regulation of News Boxes in Public Right-of-Way; Section 9.53, Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending; Section 12.145(1)(d), No Street Vending from Parking Meter”