



Legislation Text

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**Fiscal Note**

No appropriation required.

**Title**

Amending the “Regulations Governing Vending on the State Street Mall/Capitol Concourse” to create a demerit point for missing a day of the Food Cart Review, to modify the rules for a food vendor to move into another food vendor’s unoccupied site, eliminating the rule that Mall/Concourse food carts cannot be moved with a vehicle until after 2:30 p.m., and making various housekeeping changes regarding Food Cart Review point tabulation and appeals.

**Body**

WHEREAS, Under Sec. 9.13(6)(c) 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, pursuant to Sec. 9.13(6)(c) the Common Council must approve the regulations promulgated by the VOC; and

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

WHEREAS, at its meeting on August 31, 2016, the VOC promulgated amendments to these Regulations as set forth below, using underlines to show new text and strike-outs to show deleted text;

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” recommended by the Vending Oversight Committee:

**1. Amend Sec. III. C. as follows:**

C. Fall Food Vending Review. All applicants for Mall/Concourse Food Vendor licenses, including returning Mall/Concourse food vendors, shall be required to participate in an annual Food Vending Review. The Food Vending Review shall be conducted every year during the last week of September and the first week of October. During these weeks, reviews may take place Monday through Friday between 11:00 a.m. and 2:00 p.m., and on Saturday(s) between 8:00 a.m. and 12:00 p.m. In the event of severe weather, specific review days may be rescheduled upon notice to all participants. Returning food vendors will be reviewed in their regular sites during their regular business hours. New applicants will be assigned a site by the Street Vending Coordinator for review on a designated Saturday. New applicants may not be open for business to the regular public during this time. Participants will be penalized one (1) demerit point per day from their total Fall Food Cart Review score for missing any day of the assigned days of the Food Cart Review.

**2. Amending Sec. III.C.1., Food Cart Review Eligibility, as follows:**

1. The Fall Food Vending Review shall be open to all new applicants and currently

licensed food vendors, otherwise eligible under ss. 9.13(6)(i)2.a. and 9.13(8)(a), who have obtained and passed a preliminary inspection as required by the Madison Department of Health Public Health-Madison and Dane County, have committed no significant health violations (defined in sub. 2. below) and received not more than two (2) vending citations or complaints within the past twelve (12) months preceding the review date. "Complaint" for purposes of this section shall mean a civil prosecution for an ordinance or regulation violation initiated by complaint under sec. 800.02, Wis. Stats.

**3. Amending Sec. III., Additional Procedures for Food Vending Site Assignments, subsection E., Definitions, as follows:**

"Unoccupied Site:" A food vending site that has been assigned and accepted by a properly licensed food vendor for the vending season in question but not occupied by the vendor on a specific day. An Unoccupied food vending site may be used temporarily for the day by a Food Vendor who has permission of the vendor to whom the site is assigned, or only by an Arts and Crafts vendor under the procedures in Section II.F.1.b.iv.

**4. Amending Sec. IV, Food Vending Review Judging Guidelines and Site Assignment Criteria, Subsection A. 2., Violations/Demerit Points, as follows:**

2. Violations/ Demerit Points.

Citations/Ordinance Violations:

Violation demerit points are determined by calculating the total number of ~~prior-year~~ violations by the vendor of sec. 9.13, any of the regulations adopted therein, or the other ordinance violations listed in Sec. 9.13(8)(a) Madison General Ordinances issued to the applicant between July 1 of the previous year to June 30 of the year the Review is held. Each such violation considered shall be documented by a citation/civil complaint.

Other Violations/Demerit Points:

- Missing any day of the Food Cart Review as described in Sec. III.C.
- For the purposes of these guidelines, a "violation" also includes a vendor's Failure to vend or discontinuance of any item listed on the application or a substantial change in vending presentation where a vendor's past rating was based in whole or in part on the quality and uniqueness of the item(s) either not sold or discontinued or on the quality or uniqueness of the vending presentation either abandoned or substantially changed. Such material change shall be grounds for suspension of the Mall/Concourse Vending License. Any applicant for license renewal who shall have been suspended for such reason during the previous vending year shall be penalized twenty (20) demerit points in the next food review process.
- Additionally, five (5) demerit points will be assessed for any of the following:
  - if a vendor has had his/her **vending cart or mobile base kitchen ordered by the public health department to suspend or cease all operations** for seven (7) or more consecutive days during the previous vending season.

- if a vendor has had his/her **food and drink permit suspended** or revoked for a period of seven (7) or more consecutive days during the previous vending season.

**5. Amend Sec. IV. E. , Final Score Tabulation, as follows:**

E. Final Score Tabulation. Each review panelist must evaluate at least 80% of the applicant vendors on the score sheet (Appendix A) in order for the scores on their score sheet to be considered in the Final Score Tabulation. From those score sheets, the Director of the Department of Planning and Development, or designee, shall compute the average score for each applicant vendor. In computing the average score, the designee shall not include the highest and lowest score for each applicant. The designee shall add to the average score one (1) point for each year of an applicant's seniority (calculated under sec. IV.A.1.), with a maximum of seven seniority (7) points. The designee shall then subtract ~~one (1) point for each~~ any demerit or violation points calculated under sec. IV.A.2. issued to the applicant within the twelve-month period beginning July 1 of the previous year and ending June 30 of the year the Review is held, to arrive at a final score. The designee shall establish a rank-ordered list for use in the final site assignment process based upon first, second and third-choice site preferences listed by the applicant on the Application for Mall/Concourse Food Vendor form. Applicants receiving a final score of seventy (70) or more points, including seniority and demerit points, will be eligible to be assigned a site.

**6. Amend Sec. IV. F. 2., Moving into Unoccupied Site During Current Vending Season, as follows:**

2. Moving into Unoccupied Site During Current Vending Season. The definitions for "unassigned," "vacant" and "unoccupied" sites in Sec. III.E. apply to this section.

A currently-licensed food vendor with an assigned site on the Mall/Concourse may use another vendor's assigned but unoccupied site for the day, only with the prior permission of that vendor. The City will confirm whether such permission was given by contacting the vendor of the unoccupied site.

a. April 15 to October 14 (weekdays only): If an assigned food vending site remains unoccupied by the assigned vendor by 4:00 p.m. on a Monday, Tuesday, Wednesday, Thursday or Friday between April 15 and October 14, another properly licensed food vendor who has a site assignment on the Mall-Concourse for the current vending season may move into the unoccupied site at 4:00 p.m. or later, and vend from that site for the day.

b. October 15 to April 14 (Weekdays only) "Winter": If an assigned food vending site remains unoccupied by the assigned vendor by 11:00 a.m. on a Monday, Tuesday, Wednesday, Thursday or Friday between October 15 and April 14, a currently licensed food vendor may move into the unoccupied site at 11:15 a.m. or later, and vend from that site for the day. This option is available to food vendors with a current site assignment or first-time food vendors who complete the Fall Food Cart review and have received a Mall/Concourse site assignment for the upcoming vending season.

e. The option for a food vendor to occupy another food vendor's unoccupied site for the day is not available on Saturdays.

**7. Amending Sec. IV. G. as follows:**

G. An applicant may appeal to the VOC from the determination of the Director of Planning and Development, or designee, made pursuant to Section IV.A., D. or E. above solely on the grounds of food review score computation error, error in measurement or in the calculation of the applicant's seniority or number of ~~health or vending~~ demerits or violations, provided that such appeal must be made prior to site assignment. Site assignment once made by the VOC shall be final and not subject to review or appeal under Chapter 9 of the Madison General Ordinances or under these regulations.

**8. Amending Sec. IX, A. 1., Restrictions on Mobility, as follows:**

A. Restrictions on Mobility

1. Vending equipment and supplies shall be moved into the vending site by 11:00 a.m. if using a vehicle to move it, and manually if after 11:00 a.m. to and from sites manually between the hours of 11:00 a.m. and 2:30 p.m. Vendors may depart the vending site using a motorized vehicle whenever it is safe to do so, taking care to avoid interfering with pedestrians, and a vehicle may be used to move vending equipment at all other times or at any time in the event of severe weather. Any driving on the sidewalk or pedestrian walkway shall be done at a speed of less than 5 miles per hour and with due regard to the safety of pedestrian