



## Legislation Details (With Text)

<b>File #:</b>	13729	<b>Version:</b>	1	<b>Name:</b>	Late Night Vending
<b>Type:</b>	Ordinance	<b>Status:</b>		Passed	
<b>File created:</b>	2/17/2009	<b>In control:</b>	VENDING OVERSIGHT COMMITTEE (prior to 8-4-2009)		
<b>On agenda:</b>	3/17/2009	<b>Final action:</b>	3/17/2009		
<b>Enactment date:</b>	4/2/2009	<b>Enactment #:</b>	ORD-09-00066		
<b>Title:</b>	Amending Sections 9.13(3), 9.13(4)(s), 9.13(4)(t), 9.13(6)(h)3.a., 9.13(6)(i)1.b. 9.13(6)(l)1., and 9.13(6)(n) of the Madison General Ordinances to increase basic street vendor license fees, create a 3-tiered fee structure for sidewalk cafes, and create license fees and site assignment procedures for Late Night food vending.				
<b>Sponsors:</b>	Michael E. Verveer, Thuy Pham-Remmele				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>					

Date	Ver.	Action By	Action	Result
3/17/2009	1	COMMON COUNCIL	Adopt	Pass
3/9/2009	1	BOARD OF ESTIMATES (ended 4/2017)	Return to Lead with the Recommendation for Approval	Pass
2/25/2009	1	VENDING OVERSIGHT COMMITTEE (prior to 8-4-2009)		
2/24/2009	1	VENDING OVERSIGHT COMMITTEE (prior to 8-4-2009)	Refer	
2/24/2009	1	COMMON COUNCIL	Referred	
2/17/2009	1	Attorney's Office/Approval Group	Referred for Introduction	

### Fiscal Note

The changes to the fees for sidewalk cafes , basic street vendor licenses, and the introduction of a licensing fee for late night vending are part of a restructuring of the City Street Vendor licensing and monitoring program, which will include both fee changes and the addition of a permanent, part-time Street Vendor Monitor in lieu of the current hourly Monitor. The fee changes are estimated to generate an additional \$14,000 annually, the proceeds of which will be credited to the City's General Fund Revenues. The creation of a permanent, part-time Street Vendor Monitor in the operating budget of the Economic and Development Division will be included in a separate Resolution. It is anticipated that the additional fee revenues in this Ordinance will be sufficient to cover the additional, incremental cost for the permanent, part-time Street Vendor Monitor position.

### Title

Amending Sections 9.13(3), 9.13(4)(s), 9.13(4)(t), 9.13(6)(h)3.a., 9.13(6)(i)1.b. 9.13(6)(l)1., and 9.13(6)(n) of the Madison General Ordinances to increase basic street vendor license fees, create a 3-tiered fee structure for sidewalk cafes, and create license fees and site assignment procedures for Late Night food vending.

### Body

DRAFTER'S ANALYSIS: This ordinance accomplishes several changes. First, the license fee for a basic street vendor license (required for all street vending city-wide) is raised from \$120 to \$150 for the annual license and from \$50 to \$75 for the monthly license.

Secondly, this amendment creates significant new procedures for Late Night vending. Currently, there are four "Late Night Vending" areas for street vendors to sell food after hours. No special license is required and no vending sites are assigned. This amendment would create a late night license fee of \$350/year for regular sized food carts, and \$125/year for small push carts, in addition to the basic annual license. The amendment establishes assigned sites in the Frances Street vending area for small push carts, and assigned sites for regular sized food carts in the 700 block of State Street (Library Mall). These sites would be assigned by seniority, using the date the vendor first obtained a basic City street vendor license, minus any demerit points. Late Night Vending in the 300-400 blocks of Frances Street and Library Mall would be permitted only in assigned sites, and vending from vehicles, trailers or carts parked in the street or anywhere else would be prohibited in those two areas. Licensed Mall/Concourse food vendors on Library Mall would have first priority to use their daytime site for Late Night Vending, with the purchase of a Late Night License. The closing hours for daytime vending on Library Mall would be changed to 8 p.m. to allow Late Night Vendors to set up. The 300 block of Frances Street is being added to the Frances Street late night area in order to regulate vending on that block after 9 p.m. Vending in the other two "Late Night" areas (Broom St. and Johnson St.) would remain the same - first come, first served basis with no assigned sites. Vending from vehicles or trailers in the street would continue to be allowed in the Broom and Johnson Street areas. This amendment also makes it clear that certain cart specifications, such as maximum size, apply to late night food carts and food vendors city-wide. The ordinance clarifies that all food vending carts, in the absence of another rule, must fit within a 10'x12' footprint.

This ordinance amendment would also create a 3-tiered fee schedule for sidewalk cafes. Currently, the license fee is \$300 for any sidewalk café. Under this amendment, the fee would depend on the size of the café, based on the maximum number of chairs permitted within the approved café enclosure. The 3-tiered fee would apply to sidewalk cafes in the State Street Mall/Capitol Concourse area, and city-wide.

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

1. Subsection (3) of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

"(3) Application for any street vending license shall be filed with the Director of Planning and Community and Economic Development or designee, shall contain such information as she/he may require, shall specify in detail the food, goods or services to be offered for sale, shall be approved by her/him if all applicable ordinance and regulation requirements have been met, and shall then be issued by the City Clerk. Licenses shall be issued and signed by the City Clerk and shall be conspicuously displayed at the place where such sales are being made. In addition to the Licenses in this section, special licenses are required for vending in the Mall/Concourse Vending Area, under Sec. 9.13(6), Late Night Vending under Sec. 9.13(6)(n), and High Density Vending Areas under Sec. 9.13(7). Street vending licenses issued under this subsection or elsewhere in Sec. 9.13 are not transferable.

(a) Licenses under this subsection shall be of three (3) classes, based upon duration, and paid to the City Treasurer:

1. Basic Street Vendor License (Annual) License. ~~The fee for an annual license shall be one hundred twenty dollars (\$120) which shall be paid to the City Treasurer.~~ One-hundred and fifty dollars (\$150). Such Annual licenses 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. Basic Street Vendor License (Monthly) License. ~~Seventy-five dollars (\$75). The fee for a monthly license shall be sixty dollars (\$60) which shall be paid to the City Treasurer.~~ Such license shall be issued for thirty (30) days and shall set forth the date of expiration.
3. Special Event Vending License. The special event vending license fee shall be based on the number of vendors participating in the special event, and shall cover all street vending activities for the duration of the special event. The license shall set forth the exact days on which and the exact location where such business shall be carried on and shall be valid only during the dates and at the locations specified. Fees for a Special Event Vending License shall be paid to the City Treasurer as follows:
 

1 to 50 vendors	\$150
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51 to 200 vendors	\$250
Over 201 vendors	\$350

- (b) Insurance. In addition, to hold a valid license, the vendor shall have in force adequate liability insurance as defined in Sec. 9.13(6)(m) of these ordinances.
- (c) Change of Address. A vendor to whom a street vending license has been issued under this subsection shall inform the designee of the Director of the Department of Planning and Community and Economic Development of any change of address of the primary vendor named on the street vending license, in writing, if the address change occurs during the time period for which the vending license was issued."

2. Subdivision (s) entitled "Safety Requirements for Non-Mall/Concourse Food Vending" of Subsection (4) entitled "General Restrictions on Vending" of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

- "(s) Safety Requirements for Non-Mall/Concourse Food Vending. Street vendors holding a basic street vendor license licensed under Sec. 9.13(3) may sell food anywhere that vending is permitted with that license. Food carts are subject to inspection, and regulation and licensing according to state and local health code requirements for food and drink service. Additionally, The following requirements found in the Regulations Governing Vending on the State Street Mall/Capitol Concourse shall also apply to all food vendors City-wide:
- 1. Section VI, "Regulation of Vending Site Cleanliness and Safety."
  - 2. Section VII, "Non-Cart Food Vendor Physical Specifications."
  - 3. The following paragraphs only of Section VIII, "Regulation of Food and Non-Food Vending Carts:" Paragraph B. (Physical Specifications) 4. and 5. only, Paragraph C., "(Electricity,)" and Paragraph E., "(Fire Extinguishers.)"
  - 4. Section IX, "Miscellaneous Regulations," Paragraph A. (Restrictions on Mobility), Paragraph B. (Removal of Carts and Equipment) and Paragraph C. only—"(Restrictions on Food Preparation.)"

3. Subdivision (t) of Subsection (4) entitled "General Restrictions on Vending" of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

- (t) Size of Food Vending Sites Carts and Equipment. All food vending sites city-wide, whether for a vending cart or other non-cart apparatus, and including the Late Night vending sites established under 9.13(6)(n), shall have dimensions of ten (10) feet by twelve (12) feet, unless another size is specifically created or established elsewhere in this ordinance, or in the Regulations promulgated under this ordinance All food vending carts, stands and equipment, including those of Late Night food vendors, shall fit entirely within a 10' x 12' footprint unless another size (smaller or larger) is specified elsewhere in this ordinance, the Regulations promulgated under this ordinance, or the maps created by Regulation.

4. Subparagraph a. entitled "Annual License" of Paragraph 3. of Subdivision (h) entitled "Mall/Concourse Vending Licenses and Fees" of Subsection (6) entitled "Regulations and Procedures for Vending on the State Street Mall/Capitol Concourse" of Section 9.13 entitled "License for Selling on Public Streets" is amended to read as follows:

- "a. Annual License - The fees for an Annual License shall be as follows set forth below. Annual licenses 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 of the year following its issuance. The license fee shall be paid to the City Treasurer:
- i. Food Vendors: eight hundred dollars (\$800.)
  - ii. Arts and Craft Vendors: four hundred dollars (\$400.)
  - iii. Merchant Vendors: one hundred and fifty dollars (\$150), except as indicated in v. below.
  - iv. Sidewalk Cafes: ~~three hundred dollars (\$300),~~ Except as indicated in v. below, the sidewalk café license fee shall be determined by the size of the café, based on the number of chairs shown on the approved sidewalk café application:
    - 1 to 10 chairs: \$300/year
    - 11 to 20 chairs: \$400/year

21 or more chairs: \$500/year

- v. For sidewalk cafes and merchant vendors located on a block of State Street that is scheduled for reconstruction anytime during the vending season pursuant to the "State Street and Adjacent Street Reconstruction Assessment District" project commencing in 2004 ("State Street Reconstruction") the annual fee for a sidewalk cafe license shall be \$50 and the fee for a merchant vendor license shall be \$25. A vendor shall be entitled to this reduced fee if, at the time the vendor applies for the annual license, the Common Council has adopted a resolution approving plans, specifications and schedule of assessments for a phase of the State Street Reconstruction to take place anytime during the vending season in question, for any portion of the block on which that vendor is located, as indicated by the plans that are approved for the project number(s) listed in that resolution.

These reduced \$50 and \$25 annual fees shall only be available until the last day before the first full vending season after the street reconstruction for that block has been completed. This provision shall have no further effect for vendors in those blocks after that date. This provision, in its entirety, shall expire the day before the first full vending season after street reconstruction for all blocks of State Street have been completed under the State Street Reconstruction project.

~~The license fee shall be paid to the City Treasurer. Annual licenses 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 of the year following its issuance.~~

- vi. Late Night Vending License. See Sec. 9.13(6)(n) for Late Night Vending license fees.

5. Subparagraph b. of Paragraph 1. entitled "Application" of Subdivision (i) entitled "Procedures For Granting a Mall/Concourse Vending License" of Subsection (6) entitled "Regulations and Procedures for Vending on the State Street Mall/Capitol Concourse" of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

- "b. Application for a Mall/Concourse Sidewalk Cafe or Merchant Vendor License shall be filed with the Director of Planning and Community and Economic Development, or designee on a form prescribed by the Vending Oversight Committee (VOC). The application for new and returning sidewalk cafes shall include a scale drawing of the site, including the location of all trees, poles, benches, gratings, and other amenities or obstructions, and the location of the proposed furniture and other vending equipment. All applications shall be accompanied by a photograph, catalogue page(s) or detailed renderings of the tables, chairs barriers or other furniture or equipment being considered for use, including the location and number of chairs, with dimensions and color included. The application shall also contain any information required by regulation or by the Director of Planning and Community and Economic Development."

6. Paragraph 1. entitled "Hours" of Subdivision (l) entitled "Miscellaneous Vending Restrictions" of Subsection (6) entitled "Regulations and Procedures for Vending on the State Street Mall/Capitol Concourse" of Section 9.13 entitled "License for Selling on Public Streets" of the Madison General Ordinances is amended to read as follows:

- "1. ~~Hours. There shall be no vending and no sidewalk cafe shall be open for business on the State Street Mall/Capitol Concourse between the hours of 1:00 a.m. and 5:00 a.m., and all vending equipment (i.e. carts, tables, etc.) shall be removed by the vendor from the State Street Mall/Capitol Concourse during these hours except by express agreement to the contrary contained in a resolution adopted under Section 9.13(6)(k) of the Madison General Ordinances or except in the specific areas established for late-night vending under Sec. 9.13(6)(n) herein. The permitted hours for all street vending on the State Street Mall/Capitol Concourse shall be from 5:00 a.m. to 1:00 a.m., with the following exceptions:~~
- a. Permitted hours in the 700 block of State Street shall be from 5:00 a.m. to 8:00 p.m., except that Mall/Concourse food vendors with a Late Night Vending License for their assigned site may continue vending from 8:00 p.m. through the Late Night Vending hours under Sec. 9.13(6)(n).
  - b. Permitted hours in the Late Night Vending areas shall be as established in Sec. 9.13(6)(n).
  - c. Permitted hours for vending may be modified pursuant to a resolution adopted by the Common Council under Sec. 9.13(6)(k).
  - d. All vending equipment (including sidewalk cafés licensed under this section) shall be completely

removed during the hours in which vending is not permitted.”

7. Subdivision (n) entitled “Late-night vending areas in the Mall/Concourse” of Subsection (6) entitled “Regulations and Procedures for Vending on the State Street Mall/Capitol Concourse” of Section 9.13 entitled “License for Selling on Public Streets” of the Madison General Ordinances is amended to read as follows:

“(n) Late-night vending areas in the Mall/Concourse.

1. The following Certain areas within the Mall/Concourse are established for the purpose of street vending of food and drink only between the hours of 9:00 p.m. and 6:00 a.m. These areas shall be open to any vendor holding a valid street vendor license under Sec. 9.13(3), who offers for sale food and drink only, and is otherwise properly licensed to sell food and drink.

Vendors operating under this subdivision Vendors operating as licensed Late Night Vendors are not considered Mall-Concourse Food Vendors, do not need a Mall/Concourse Vending License, and need not participate in food cart reviews, and shall Vendors operating as licensed Late Night Vendors are not be subject to any other portions of this ordinance Section 9.13(6) or the Regulations Governing Vending on the State Street Mall/Capitol Concourse adopted under Sec. 9.13(6)(c), except those listed in Sec. 9.13(4)(s) (safety requirements for non-Mall/Concourse food vending), Secs. 9.13(6)(k), (exclusive use and special events), (6)(l)2. (use of electricity) , (6)(l)3. (emergency vehicle access), (6)(l) 4. (relocation), and (6)(m) (insurance), and those Regulations listed in Sec. 9.13(4)(s) (safety requirements for non-Mall/Concourse food vending). Vendors operating under this paragraph are not considered Mall-Concourse Food Vendors. Late Night vending is subject to Sec. 9.13(4), all other applicable portions of this Ordinance, and applicable traffic and parking laws.

Occupancy of these vending areas shall be on a first-come, first-served basis, except that any licensed Mall-Concourse vendor with an assigned vending site located within one of the late-night areas shall have priority within their assigned site. There shall be no other established vending sites within these areas, but vendors and equipment are subject to the location requirements of Sec. 9.13(4) and any other applicable law. Vendors who vend from a vehicle on the street are also subject to all applicable traffic laws. The late-night vending areas shall be as follows:

2. Licenses Required: One (1) Late Night Vending License shall be required for each vending cart or food stand. Additionally, every person working or performing vending activities as defined in Sec. 9.13(1) must hold a valid basic street vendor license under 9.13(3).

No person shall vend (as defined in Sec. 9.13(1)) in a late night vending area during late night vending hours without the licenses required hereunder.

3. Late Night Vending Areas:

1a. The 700 block of State Street (Library Mall). Late Night Vending in this area shall be from assigned sites only and is prohibited in any other location including any part of the roadway, parking lanes or legal parking spaces (i.e. the street). Late Night sites will be assigned under sec. 9.13(6)(n)4.

2b. The 300 and 400 blocks of North Frances Street (Frances Street). Late Night Vending in this area shall be restricted to small push carts only, from assigned sites only, and is prohibited in any other location including any part of the roadway, parking lanes or legal parking spaces (i.e. the street). Late Night sites will be assigned under 9.13(6)(n)4. See sec. 9.13(6)(n)4. for the definition of small push carts.

3c. The 400 block of North Broom Street and 4. The 100 and 300 blocks of West Johnson Street. Occupancy of these two late night vending areas shall be on a first-come, first-served basis, except that any licensed Mall-Concourse vendor with an assigned site in one of these areas shall have priority within their assigned site.

4. Application, Site Assignment. Vendors holding a basic street vending license may apply for a Late Night Vending License at the Office of Business Resources, using an application form created by the Vending Coordinator, as follows:

a. Unassigned Late Night Vending Areas: If not applying for an assigned site, applications may be filed at any time. Approval and issuance of the license shall follow the general

- procedure in sec. 9.13(3).
- b. Assigned Late Night Sites: Applications for an assigned site (Library Mall or Frances Street only) must be filed no later than April 1 to be eligible for site assignment for the upcoming vending season (April 15-April 14). The vendor must accept the site in writing and purchase a Late Night Vending License within ten (10) calendar days of receiving notification of the site assignment, or will forfeit the site assignment. Failure to use an assigned vending site by June 1st will result in forfeiture of the site assignment. Only one (1) Late Night site will be assigned per vendor, and site assignments are not transferrable.

Late Night Site Assignment Procedure. The Vending Coordinator shall establish vending sites in the Library Mall and Frances Street areas consistent with secs. 9.13(6)(n)3.a. and b., on an official map available at the Office of Business Resources.

Mall/Concourse food vendors with an assigned site in one of these areas will have first priority to use their site for Late Night vending, but must follow the application process in sec. 9.13(6)(n)4.b. and purchase a Late Night Vending License.

All other applicants shall be ranked according to a seniority system, using the date the vendor was first issued a basic street vendor license under ss. 9.13(3)(a) 1. or 2., minus any demerit points (see sec. 9.13(6)(n)3.) For individual applicants, the name on the late night application and the basic street vendor license used for seniority must be the same. If the late night license applicant is a business organization, the basic street vendor license used for seniority must be in the name of an officer, member, partner, or the sole proprietor of the business. If more than one applicant was issued a basic license on the same date, the time of issuance will determine seniority. If the time is not available, seniority will be determined alphabetically using the last name on the basic street vendor license.

Applicants shall list three (3) site preferences on the application. The vendor with the most seniority (minus any demerit points) will be assigned his/her first preferred site, the next vendor assigned to his/her first available preferred site, and so on; until all applicants have been assigned a late night site or until the sites are full. If applicants remain after all sites are filled, a waiting list will be created, using the same seniority system. Late applicants and vendors who forfeit their Late Night assignment will be placed at the bottom of the waiting list. Any site that becomes available after initial site assignments have been made shall be offered to the highest-ranking vendor on the waiting list.

5. Demerit Points for Late Night License Applications. One (1) year of seniority will be subtracted for each demerit point described below:
- a. One (1) demerit point will be assessed for any violation of Sec. 9.13, the Regulations adopted thereto, or any other violation listed in Sec. 9.13(8)(a) (except for serious health code violations described below). A violation counts as a demerit point if charged in a citation or civil or criminal complaint with a date of violation in the previous vending season.
  - b. Serious Health Code Violations: Five (5) demerit points will be assessed if the applicant's food and drink permit has been suspended or revoked for seven (7) or more consecutive days during the previous vending season, or if the applicant's vending cart or mobile base kitchen has been ordered by the public health department to suspend or cease all operations for seven (7) or more consecutive days during the previous vending season.
  - c. For purposes of sec. 9.13(6)(n)5.a. and b., violations issued to the person named on the basic street vending license, the holder of the mobile cart license(s), if applicable, and the person or business listed as the applicant for the Late Night Vending license will all be counted.
  - d. If an applicant's vending license has ever been suspended or revoked under Sec. 9.13(8), the number of days the license was been suspended or revoked shall be subtracted

from the total number of days counted for seniority. Suspensions or revocations against the person named on the basic street vending license and the person or business applying for the late night vending license shall be counted.

6. Late Night Vending License Fees. Late Night Vending licenses are issued per food vending cart or stand, valid from April 15 to April 14, with the following fees:

- a. Small push-carts that can be moved by hand, of a size and construction that does not meet the definition of "vehicle" under Wis. Stat. sec. 340.01(74) (2007-2008) and that fit entirely within a footprint of 4 feet by 8 feet: \$125/ annual.
- b. All other food vending carts or stands: \$350/annual."

8. The City Attorney is directed to make corresponding changes throughout 9.13 and other City ordinances to reflect the new name of "Basic Street Vendor License" under sec. 9.13(3)(a)1. and 2., as amended in item 1. herein.