



Legislation Text

File #: 81953, Version: 2

**Fiscal Note**

No City appropriation required.

**Title**

SUBSTITUTE: Amending Sections 9.136(1)(l),(n), 9.13(1)(a) and (c), 9.13(3), (7)(d), (10)(g)2., and (11)(c) of the Madison General Ordinances to create Night Vending sites in the 700 and 800 blocks of State Street and clarify umbrella license eligibility for food vendors. (Citywide)

**Body**

DRAFTER'S ANALYSIS: This ordinance amends the existing Late Night Vending program to establish sites in the 700 and 800 blocks of State Street for vending food and drink from 8:00 p.m. to 12:30 a.m. Wednesdays through Saturdays. The current Late Night Vending ordinance was to sunset in 2024, and directed staff to develop a new program for night vending to continue in the 700 and 800 blocks of State Street only. This ordinance accomplishes that directive and will allow night vending to continue, with new rules in the new location. The ordinance increases the total number of night vending site from 3 to 5, and maintains seniority for existing licensed late night vendors. The ordinance makes technical changes and corrections consistent with the new program and clarifies eligibility for an umbrella basic vending license for all vendors selling food.

The Substitute amends the end time for this Night Vending area to 2:30 a.m. as recommended by the Vending Oversight Committee.

\*\*\*\*\*

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

1. Paragraph 1 entitled "Hours" of Subdivision (l) entitled "Miscellaneous Vending Restrictions" of Subsection (1) of Section 9.136 entitled "Street Vending on the State Street Mall/Capitol Concourse" of the Madison General Ordinances is amended as follows:

- "1. Hours. 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 500 block of North Frances Street (Concrete Park) shall be from 5:00 a.m. to 8:00 p.m., except that vendors with an assigned site in Late Night Vending area L3 may vend during the Late Night Vending hours established under Sec. 9.136(1)(n).~~ Permitted hours for Mall/Concourse licensed vendors with a site on the 700 or 800 blocks of State Street shall be from 5:00 a.m. to 7:00 p.m. because this space overlaps with assigned sites in the Night Vending Area for which vending begins at 8:00 p.m.
  - b. ~~Permitted hours in the Late Night Vending areas area shall be Wednesdays through Saturdays from 8:00 p.m. to 12:30 a.m.~~ 2:30 a.m., with all equipment removed by 1:00 a.m. 3:00 a.m. as established in Sec. 9.136(1)(n).
  - c. Permitted hours for vending may be modified pursuant to a resolution adopted by the Common Council under Sec. 9.136(1)(k).
  - d. Equipment Removal when Closed. ~~All~~ Unless otherwise specified, all vending equipment shall be completely removed during the hours in which vending is not permitted, except that sidewalk cafe equipment shall be removed no later than thirty (30) minutes after the establishment closes, or at the time required for snow removal by Sec.

9.136(1)(l)6.c.ii., if applicable, unless alternate removal and storage procedures have been approved for a sidewalk cafe by Sec. 9.135(9). Mall/Concourse Food Vendors with Saturday-only assigned food vending sites may park and leave food carts securely locked and unattended in the assigned sites between 12:00 a.m. and 5:00 a.m. on Saturdays only, from the third Saturday in April through the second Saturday in November.

- e. The hours for Sidewalk cafes on the Mall/Concourse are further described in Sec. 9.135 (3).”

2. Subdivision (n) entitled “Late Night Vending (LNV) Areas” of Subsection (1) of Section 9.136 entitled “Street Vending on the State Street Mall/Capitol Concourse” of the Madison General Ordinances is amended as follows:

“(n) Late Night Vending (LNV) Areas State Street Night Vending Area.

- 1.
  - a. ~~Certain areas within the Mall/Concourse and downtown area~~ Location and Hours. Sites within the 700 and 800 blocks of State Street are established for vending food and drink at night, Wednesdays through Saturdays, between the hours of ~~9:00 p.m. and 4:00 a.m. 8:00 p.m. and 12:30 a.m.~~ 2:30 a.m., with all equipment removed by 1:00 a.m. 3:00 a.m. ~~The Late Night Vending Areas established under this subsection shall continue until April 14, 2023, after which time the only available vending area under this subsection will be the Library Mall as described in Sub. 3.c. below.~~
  - b. Applicability of Other Sections. Vendors operating as licensed ~~Late Night Vendors with a license under this section~~ are not considered Mall-Concourse Food Vendors, do not need a Mall/Concourse Vending License, and need not participate in the food cart review. ~~Vendors operating as licensed Late Night Vendors~~ When operating with a Night Vending license under this section, vendors are not subject to other portions of Sec. 9.136 or the Regulations Governing Vending on the State Street Mall/Capitol Concourse adopted under Sec. 9.136(1)(c), except Secs. 9.136(1)(k), (exclusive use and special events), 9.136(1)(l)2. (use of electricity), 9.136(1)(l)3. (emergency vehicle access), 9.136(1)(l)4. (relocation), 9.136(1)(m) (waiver/insurance/indemnification), and those Regulations listed in Sec. 9.13(4)(s) (safety requirements for non-Mall/Concourse food vending). ~~Late Night vending is subject to Sec. 9.13(4), all other applicable portions of this Section and Sec. 9.13, and applicable traffic and parking laws.~~
  - c. Equipment. All vending equipment shall fit within the dimensions of the vending site established by the Director, except for required line control equipment. Night Vendors shall use equipment meeting specifications established by the Director to control lines of customers waiting to order or waiting for food that prevents them from spreading into roadways, walkways, emergency access lanes, and other vendors’ sites.
  - d. No Electrical Sites. There will be no electrical sites in the Late Night Vending Area, all carts/equipment must be self-powered.
- 2. Eligibility and Required Licenses Required, Eligibility.
  - a. Eligibility. Beginning with the ~~2018-2019~~ 2024-2025 vending season, eligibility for Night Vending Sites will be as follows:
    - i. ~~only those applicants who held a valid Late Night Vending License during the 2016-2017 or 2017-2018 vending season~~ and have maintained

seniority as described below through the 2023-24 vending season are eligible for a ~~Late Night Vending License~~ and site ~~or zone~~ assignment, determined by the names printed on the past license. For purposes of eligibility under this paragraph, all names printed on the past license must match the applicant names.

ii. Any other vendor able to meet the requirements of this section.

b. Required Licenses. One (1) Late Night Vending License shall be required for each ~~vending cart or food stand~~ and shall be issued in the name of the individual or business entity responsible for the Late Night Vending activities, ~~which must match the name(s) on the past license.~~ Additionally, every person working or performing vending activities as defined in Sec. 9.13(1) must hold a valid basic street vendor license or be included on an Umbrella Basic License under Sec. 9.13(3).

No person shall vend (as defined in Sec. 9.13(1)) in an ~~LNV area~~ the Night Vending Area during ~~LNV hours~~ night vending hours without the licenses required hereunder and without an ~~LNV zone or a~~ site assignment.

3. Late State Street Night Vending Areas.

- a. Creation of Site or Zones Sites. Beginning with the ~~2018-2019~~ 2024-2025 vending season, the Director, with the written approval of the Chief of Police or designee, may establish up to five (5) Late Night Vending zones or sites to accommodate timely applicants eligible for licensing under Sub. (n)2. above. Such sites or zones may be located within or outside the Mall/Concourse Vending Area (but not in a residential zoning district), subject to applicable placement requirements elsewhere in this Section and 9.13. A "site" under this Section means a specific site on a sidewalk or other non-roadway right-of-way such as a pedestrian mall. A "zone" means a geographic area identified by a range of street addresses and/or block number. When a zone is established, vending may occur only within a legal parking space on the roadway within the zone in the 700 and 800 blocks of State Street only. The Director shall establish specific sites within these blocks and describe them on a map for this purpose, which shall include the dimensions of each site. The Director shall notify eligible potential vendors and the VOC of the sites and zones established under this Section prior to the deadline for applications each season.
- b. Assignment. The Director shall assign Late Night sites ~~or zones~~ to eligible applicants based on seniority and mix and balance as described in Sec. 9.136(1) (n)4.b. The Director shall notify each applicant vendor of the site ~~or zone~~ assignment prior to April 15 of the licensing year in question.
- c. The Director may relocate any licensed late night vendor to another site ~~or zone~~ at any time during the season, and may create, move, or eliminate sites, temporarily or permanently, for construction or other reasons, ~~or zones for such purpose~~ with the written approval of the Chief of Police or designee. If a vendor is moved to a temporary site with different licensing requirements, they must obtain all licenses required for vending in the relocated or temporary site. Nothing in this paragraph shall be construed to limit the authority of the police to temporarily relocate or eliminate a vending site in the case of an emergency.
- e. 700/800 State Street Night Vending Area. Beginning with the 2024 vending season, a zone with sites for night food vending will be established in the pedestrian mall area of the 700 and 800 blocks of State Street with a program to include licensing, site assignment, and promotion of this area to be promulgated by staff and approved by the Vending Oversight Committee prior to the 2024

~~season.~~

4. Application, Site Assignment. Applicants holding a basic street vendor license or umbrella basic license, when applicable) and who are eligible under Sub. (n)2. above may apply for a Late Night Vending License at the Office of Business Resources, using an application form created by the Director, as follows:
  - a. Deadline to Apply and Use License. Applications for ~~an LNV zone or an assigned site~~ must be filed no later than April 1 to be eligible for zone or site assignment for the upcoming vending season (April 15-April 14). The vendor must accept the zone or site in writing and purchase a Late Night Vending License within ten (10) calendar days of receiving notification of the assignment, or will forfeit the assignment. Failure to use an assigned ~~LNV zone or site~~ by June 1st will result in forfeiture of the assignment. ~~Late applicants and vendors who forfeit their Late Night assignment shall permanently forfeit their eligibility for a Late Night Vending License and Late Night site or zone assignment for that season, and in the future.~~
  - b. Late Night Site Assignment Procedure. ~~Site and zone assignment procedure shall be based on seniority as described below. Only one Late Night zone or site will be assigned per Late Night Vending applicant, per season. Site or zone assignments and Late Night Vending Licenses are not transferrable between individuals or business entities under any circumstances, including the sale or acquisition of business, business name, vending cart, or equipment.~~

All eligible applicants shall be ranked according to a seniority system. Seniority shall be calculated by counting the number of vending seasons that the applicant has purchased ~~an LNV~~ a night vending license (of any duration) ~~issued under Sec. 9.13(3)(a)1. or 2.,~~ counting backwards from the present, and subtracting any demerit points (see Sec. 9.136(1)(n)5.). ~~However, a A vendor may have taken, prior to the 2018-2019 vending season, one (1) vending season as a sabbatical (not purchase a license that season) without losing seniority, but that year will not be counted toward the applicant's total number of years of seniority. If a vendor had two (2) consecutive vending seasons prior to the 2018-2019 vending season without purchasing a LNV night vending license, 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. Beginning with the 2018-2019 vending season, no LNV sabbaticals will be allowed and any one year without a LNV license will result in loss of seniority and permanent loss of eligibility for future LNV licensing.~~

In determining seniority of applicants, the business and individual names on the current LNV night vending application and the LNV license previous night vending license(s) under previous versions of this section used for seniority must be the same. If more than one applicant was issued ~~an LNV~~ a previous night vending license on the same date, the time of day that the license is created will determine seniority. If the time is not available, seniority will be determined by a coin toss conducted by the Director.

Applicants shall list three (3) ~~zone and/or~~ site preferences on the application. The applicant with the most seniority (minus any demerit points) will be assigned their first preferred ~~zone or site~~, the next applicant assigned to their first available preferred ~~zone or site~~, and so on; until all eligible applicants have been assigned a ~~zone or site~~ or until all are full. ~~There shall be no waiting list for Late Night Vending. 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~~

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, and so on. In addition, the ~~Designee of the department~~ Director may consider whether the site assignments under the above system result in an inappropriate mix and balance, and may, upon consultation and approval of the applicant(s) affected, rearrange site assignment to achieve an appropriate balance. The ~~designee~~ Director may consider the extent to which the food sold at one site is different from that sold at adjacent sites or otherwise proximately available, and ~~the designee~~ may give great consideration to maintaining the diversity of vending in order to achieve a better balance of vendors and products so as to better serve the public.

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 Madison and Dane County to suspend or cease all operations for seven (7) or more consecutive days during the previous vending season.
  - c. For purposes of Sec. 9.136(1)(n)5.a. and b., violations issued to the person named on the basic street vending license, the holder of any health department license for the vending operation, if applicable, and the person and/or business entity 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 that 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 on an annual basis, valid from April 15 to April 14. License fees, late fees, and deadlines shall be as set forth in Sec. 9.13(1)(a), Table A., 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. § 340.01(74) and that fit entirely within a footprint of 4 feet by 8 feet: \$200/annual.~~
  - b. ~~All other food vending carts or stands: \$500/annual.~~
  - c. ~~Late payment fees shall be as set forth in Table A.~~
7. Violations. No person shall conduct the activities for which an ~~LNV~~ a Night Vending license is required herein without having been issued a valid ~~LNV~~ license, and no person shall vend in any ~~LNV zone or~~ Night Vending site without being assigned to that ~~zone or~~ site, and no person shall vend from a location other than a valid ~~Late Night Vending Area~~ site during hours when street vending is not permitted elsewhere in this Section or Sec. 9.13. No person shall violate any other provision of Sec. 9.136(1)(n)."

3. Subdivision (c) entitled "Definitions" of Subsection (1) of Section 9.13 entitled "Street Vending Licenses" of the Madison General Ordinances is amended by amending therein the following:

"Food Vendor refers to a licensed Mall/Concourse Food Vendor as defined in Sec. 9.136(1)(e) means any vendor licensed under 9.13 or 9.136 who carries all of the necessary licenses to vend food and beverage."

"Mall/Concourse Food Vendor refers to a licensed Mall/Concourse Food Vendor as defined in Sec. 9.136(1)(e)."

4. Paragraph 4. entitled "Umbrella Basic License (Food Vending Only)" of Subdivision (a) entitled "Basic Street Vendor License Fees and Durations" of Subsection (3) entitled "Basic Street Vending License" of Section 9.13 entitled "Street Vending Licenses" of the Madison General Ordinances is amended as follows:

4. Umbrella Basic License (Eligible Vendors Selling Food Vending Only). Six hundred dollars (\$600) for an annual license issued on April 15 or thereafter when applied for, and expiring on April 14 following its issuance. This license is available to:
- a. A licensed Mall/Concourse Food Vendor to provide the basic licensing necessary for any supplemental vendors working in the Food Vendor's vending site, per Sec. 9.136(1)(e) 1.c. The Food Vendor shall provide the Director, in writing, the name, date of birth and address of each worker to be listed on the Umbrella Basic License, and any workers added to or deleted to the license during the licensing period, within fourteen (14) days of the change.
  - b. A vendor holding an individual Basic Street Vending license who sells food only, under a Basic license for vending in locations where no other vending license type is required; or a vendor holding a specialty vending license (other than Mall/Concourse Food) who sells food only, where a Basic Street Vending License is also required. Such vendors may obtain an Umbrella Basic License to provide the basic licensing for workers meeting the definition of a "supplemental food vendor" under Sec. 9.136(1)(e)1.c. The vendor shall provide the Director, in writing, the name, date of birth and address of each worker to be listed on the Umbrella Basic License, and any workers added to or deleted to the license during the licensing period, within fourteen (14) days of the change. New employees and helpers, as defined in Sec. 9.136(1)(e)1.c., may be employed according to the provisions of that section."

5. Paragraph 2. entitled "Site Assignment (Seniority System)" of Subdivision (g) entitled "Application, Site Assignment Procedure" of subsection (10) entitled "Southeast Campus Vending Area" of Section 9.13 entitled "Street Vending Licenses" of the Madison General Ordinances is amended as follows:

- "2. Site Assignment (Seniority System). Site assignment shall be determined by seniority. Seniority shall be calculated by counting the number of consecutive, uninterrupted years the applicant has purchased a basic street vendor license (of any duration) under Sec. 9.13(3)(a)1. or 2., counting backwards from the present and subtracting any demerit points. However, a vendor may take one (1) vending season as a sabbatical (not purchase a license that season) without losing seniority, but that year will not be counted toward the vendor's total number of years of seniority. If a vendor takes 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. For individual applicants, the name on the Southeast Campus application and the basic street vendor license used for seniority must be the same. If the 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 has held a basic street vendor license for the same number of years, the date, and if necessary, time of day the license was issued, will determine seniority. If the date and/or time is not available, seniority will be determined by a coin toss conducted by the Director. Applicants shall list three (3) site preferences on the application. The vendor with the most seniority (minus any demerit points) will be assigned their first preferred site, the next vendor assigned to their 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 Southeast Campus 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.”

6. Subdivision (c) “Vending License Required” of Subsection (11) entitled “UW Football Game Day Vending Area” of Section 9.13 entitled “Street Vending Licenses” of the Madison General Ordinances is amended as follows:

“(c) Vending License Required. Every person working or performing vending activities at an assigned site in this area must hold a valid basic street vendor license under Sec. 9.13(3), except for vendors selling food only may use the Umbrella Basic License under Sec. 9.13(3)(a) 4.b. No additional vending license is required. No person shall vend (as defined in Sec. 9.13(1)) in the UW Football Game Day Vending “Area without the licenses required hereunder.”

7. Subdivision (d) entitled “Vendor” of Subsection (7) entitled “Regulations and Procedures for Vending in High Density Vending Areas” of Section 9.13 entitled “Street Vending Licenses” of the Madison General Ordinances is amended as follows:

“(d) Vendor. To be eligible for a license to vend goods, merchandise or services in a high density vending area a vendor may be one, two or three individuals regularly involved in the sale of the ~~food,~~ goods, merchandise or service. ~~The To be eligible for a license to vend food, the~~ vendor listed on the application and license and any other person conducting vending at the vending site must also hold a valid Basic Street Vendor Vending License or must be listed on an Umbrella Basic License under Sec. 9.13(3)(a)4.b. A vendor may also use other individuals solely to assist as helpers at the vending site provided that these individuals may not engage in any vending activities. Activities such as operating vending vehicles, loading and unloading, food or drink preparation, arranging or stocking merchandise, may be considered acceptable assistance activities. No unlicensed assistant shall sell, offer for sale, accept money, engage in prolonged commercial interactions or other transactions with customers or engage in any other direct vending activities.”