
9.136 STREET VENDING ON THE STATE STREET MALL/CAPITOL CONCOURSE

- (1) This Section governs all street vending, as defined in Sec. 9.13(1), in the State Street Mall/Capitol Concourse Vending Area. The general rules in Sec. 9.13 for street vending apply to vending activities in this Section, unless otherwise specified. Definitions not provided herein shall be as defined in Secs. 9.13 and 9.135.
 - (a) Scope and Definition of Mall/Concourse.
 1. Purpose. The physical design of the State Street Mall and the Capitol Concourse ("Mall/Concourse") are suited to street selling of handcrafted goods, personally prepared food and limited goods by contiguously-located, street-level or corresponding non-street level merchants and sidewalk cafes subject to such regulations as necessary to maintain the orderly use of the public streets and to protect the public health.
 2. Included Streets and Boundary. For purposes of street vending under this Section, the State Street Mall/Capitol Concourse Vending Area includes both sides of the street and the City sidewalks of the 100 through 800 blocks of State Street and the first block of every cross street intersecting State Street, in any direction; the Capitol Concourse consisting of the first blocks of North and South Carroll Streets, the first blocks of East and West Main Streets, the first blocks of North and South Pinckney Streets and the first blocks of East and West Mifflin Streets and the first block of all cross streets intersecting with the Capitol Concourse in any direction; the 700 and 800 blocks of Langdon Street; and all other city streets and city sidewalks within the boundaries formed by the following streets, including both sides of the boundary streets unless otherwise noted; the 400-600 blocks of North Park Street, the 600 block of North Lake Street, the 200-600 blocks of Langdon Street, the 400-500 blocks of North Henry Street, the 100 block of West Gorham Street, the 200-300 blocks of North Carroll Street, the portions of each street forming the Outer Loop around the Capitol (Fairchild, Doty, Webster and Dayton Streets), the 200 block of West Mifflin Street, the 100 block of North Henry Street, the 300 block of West Dayton Street, the 200-300 blocks of North Broom Street, the northwest side of the 400 block of West Gorham Street, the 500-800 blocks of University Avenue on the north side of the street; Elizabeth Link Peace Park and the Municipal Building Vending Area.
 - (b) Limitation on Products to be Sold Within the Mall/Concourse. Only handcrafted goods and personally prepared food as defined in Sec. 9.136(1)(e)3. and 7. and in any regulations approved by the Common Council pursuant to Sec. 9.136(1)(c) may be sold or offered for sale by within the Mall/Concourse Area and all such sales shall be limited to designated vending sites, except that non-personally prepared food and beverages may be sold in sidewalk cafes. Only goods traditionally, customarily and currently sold inside a merchant's store may be sold by a merchant vendor and only during normal business hours and on days designated in this chapter.
 - (c) Regulating Authority and Intent.
 1. The Vending Oversight Committee (VOC) is empowered to create additional regulations not inconsistent with the provisions of Secs. 9.13, 9.135, 9.136 or other ordinances and subject to approval by the Common Council. The VOC shall submit proposed regulations to the Common Council by formal resolution or report. Any such regulations shall be effective upon adoption of the sponsoring resolution or report, and a copy of any adopted regulations shall be maintained on file at the offices of the City Clerk and the Department of Planning and Community and Economic Development. The VOC may regulate the following, with assistance and recommendations from the Director:

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- a. The number, size and location of vending sites within the State Street Mall/Capitol Concourse area, with input from the Superintendent of Parks, or designee, as needed.
 - b. The procedure governing allocation or assignment of vending sites among vendors holding valid vending licenses.
 - c. The procedure governing application for and granting of Mall/Concourse vending licenses.
 - d. The procedure governing revocation or suspension of Mall/Concourse vending licenses.
 - e. Physical specifications for and aesthetics of vending carts, sidewalk cafes, signage and equipment.
 - f. The regulations, criteria and procedure for determining whether an item to be sold by a vendor is a handcrafted good or personally prepared food. This includes but is not limited to criteria which are specific to individual crafts.
 - g. Special standards for merchant vending including, but not limited to, time, location, site and equipment specifications and restrictions.
 - h. The procedure and criteria for determining whether an item to be sold by a merchant is traditionally, customarily and currently sold inside the merchant's store.
 - i. Any other matters regarding vending on the Mall/Concourse.
 2. The Common Council may at any time by ordinance or resolution adopt rules and regulations governing vending on the Mall/Concourse.
- (d) (Reserved for Future Use.)
- (e) Definitions.
1. Art and Crafts or Food Vendor. To be eligible for a license for the sale of handcrafted goods or personally prepared food a vendor must be:
 - a. Arts and Crafts Vendor. An Arts and Crafts Vendor is defined as one (1) or two (2) individuals who offer for sale only 'handcrafted goods' as defined in Sec. 9.136(1)(e)3. if both individuals are solely and regularly involved in both the production and the sale of the goods. In addition, an Arts and Crafts Vendor may be a corporation, cooperative or partnership provided that no more than two (2) people are all solely and regularly involved in all phases of both the production and the sale of the goods. The names of all such individuals shall be listed on the application and license. An Arts and Crafts Vendor shall be licensed to sell only the handcrafted goods indicated on the face of the license from one arts and crafts vending site. "Arts and Crafts Vendor" also includes a vendor meeting the criteria in this paragraph operating as a Spray Paint Artist as described in the Regulations, Sec. II.F.1.e. All sections of this Section applicable to an Arts and Crafts vendor (or "craft" vendor) shall apply to a Spray Paint Artist unless explicitly stated otherwise.
 - b. Food Vendor. A Food Vendor is an individual who offers for sale only personally prepared food for which that individual is regularly involved in all phases of both the production and the sale of the food. In addition, a food vendor may be a corporation, cooperative or partnership; however, the

application and license shall designate a primary individual who is all regularly involved in all phases of the production process and responsible for the vending operation and who holds a valid Basic street vending license or is included on a Umbrella Basic License held by the food vendor under Sec. 9.13(3). A Food Vendor shall be licensed to sell only the personally prepared food items indicated on the face of the license from one assigned food vending site.

c. Persons Permitted at Arts and Crafts and Food Vending Sites.

- i. Persons Permitted at Arts and Crafts Sites. The individually licensed vendor, at least one of the primary individual vendors listed on an arts and craft vending license, or the primary individual designated on a license issued to a corporation, cooperative or partnership must be present at the vending site at all times during which items are displayed, offered for sale or sold. Other individuals who work on handcrafted items may be present at the vending site solely to assist and need not be named on the license or hold a Basic license. 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.
- ii. Persons Permitted at Food Vending Sites. The individually licensed food vendor, or the primary individual designated on a license issued to a corporation, cooperative or partnership must be present at the vending site at all times when open for business. Primary vendors must hold a Basic license or be included on the Umbrella Basic license held by the food vendor.

Supplemental Food Vendors. A food vendor may employ supplemental vendors who need not be individually named on the food vending application or license and who conducts vending activities such as selling, accepting money, and engaging in commercial interactions with customers. Any supplemental vendors under this paragraph must hold valid basic street vendor licenses or be included on an Umbrella Basic License held by the food vendor, within fourteen (14) days of being employed by the food vendor.

New Employees. In addition, new employees of food vendors may be present at food vending sites without holding a valid Basic street vending license or without being named on an Umbrella Basic License, for up to fourteen (14) days from the date of hire as provided in sub. b. above, provided that the food vendor provides written notice to the Director of the employee's name and date of hire. Such properly-noticed new employees may assist the food vendor in vending activities, such as selling, offering for sale, accepting money, and engaging in prolonged commercial interactions with customers or engage in any other direct vending activities.

Helpers. Other individuals may be present at the vending site solely to assist and need not hold a Basic license. Activities such as operating vending vehicles, loading and unloading, food or drink preparation, or working on handcrafted items are acceptable assistance activities. No unlicensed assistant or person not named on the Food Vending License or covered by a Basic or Umbrella Basic license 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.

2. a. Contiguously-Located, Street-Level Merchant or Establishment.

A merchant or establishment is considered to be "contiguously-located, "street-level" if its place of business is located on the ground floor of a building with a street address that abuts a public sidewalk and there is space on that sidewalk that is not otherwise prohibited for vending by the Madison General Ordinances.

b. Corresponding Non-Street-Level Merchant or Establishment. A merchant or establishment is considered to be a corresponding non-street-level business if it is located in the same building as a contiguously-located, street-level business, but not on the ground floor.

3. Handcrafted Goods. Handcrafted goods are those goods produced and created entirely by an Arts and Crafts vendor, as defined in Sec. 9.136(1)(e)1.a., with their own hands, from raw or basic materials changing these materials into a significantly different shape, design, form, or function. An item shall not be considered handcrafted if anyone other than the vendor(s) named on the Arts and Crafts Vending license was involved in production. Handcrafted goods shall not include food items, beverages or any other product intended for internal consumption. Commercially grown, manufactured or processed goods in their finished form do not constitute handcrafted goods. Any good containing a commercially produced item as a significant part of the good shall not be considered handcrafted unless such commercially produced item has been substantially changed in function or character. For purposes of this Section, cut flowers and Christmas trees shall be considered handcrafted goods.
4. Licensed Mall/Concourse Vendor. A Mall/Concourse vendor is a Food Vendor, Arts and Crafts Vendor, Merchant Vendor or Sidewalk Cafe who holds a valid Mall/Concourse vending license issued under Secs. 9.136(1)(h) or 9.135.
5. Merchant Vendor. A merchant vendor is a contiguously-located, street-level merchant whose business fronts on or abuts a street in the Mall/Concourse, or a merchant whose business is located in the same building as a contiguously-located, street-level merchant, to whom a valid Mall/Concourse vending license has been issued pursuant to this Section and who has a basic street vendor issued pursuant to Sec. 9.13(3). However a restaurant or other establishment eligible for a sidewalk cafe contiguously-located to the Mall/Concourse shall not be construed to be a merchant vendor.
6. Municipal Building Vending Area includes the 200 block of Martin Luther King, Jr. Boulevard, the 10 blocks of East and West Doty Street, the 10 blocks of East and West Wilson Street, the 200 block of South Pinckney Street and the 200 block of South Carroll Street.
7. Personally Prepared Food. Personally prepared food is food or beverage produced by the vendor from raw or basic ingredients, changing the nature, form, shape or function. Any food sold on the Mall/Concourse shall comply with City and State Health Regulations. In addition, the category 'personally prepared food' shall include the following:
- a. Fruit sold by the piece or in individual-sized portions.
 - b. Condiments and other incidental ingredients given free with personally prepared food, but not including commercially packaged, prepared or produced drinks.
 - c. Coffee if prepared and brewed from beans that are locally roasted, meaning roasted at a facility located in Dane County, and tea brewed by the vendor from loose ingredients.

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- d. Food grown or raised by vendor.
 - e. Hotdogs, bratwurst or other sausages, and commercially produced buns.
 - f. Milk in individual portion sized containers.
 - g. Commercially produced soda water beverages in containers not made of glass or other shatterable material sold in conjunction with a personally prepared food item. Soda water beverage as used herein means all beverages commonly known as soft drinks or soda water.
8. Sidewalk Cafe . Sidewalk cafe is defined in Sec. 9.135.
9. Vending Year . Vending year shall mean the calendar year beginning April 15 and ending April 14 of the immediately following year, except that for a Seasonal Roadway Cafe Expansion License, the vending year shall mean April 15 to November 15.
- (f) Arts/Crafts and Food Vending Sites . The Vending Oversight Committee (VOC) shall determine, by regulation, the number, size and location of food vending sites and arts and crafts vending sites for each vending year. Each vending site may be occupied by only one vendor at a time except for craft vending sites on the 700 and 800 blocks of the State Street Mall where, at the discretion of the first craft vendor occupying an individual vending site, the site may be shared with additional craft vendors. Notwithstanding the foregoing, an Arts and Crafts Vendor operating as a Spray Paint Artist may not share a site with another craft vendor, shall operate only within a designated Spray Paint site, and follow all site assignment procedures specific for Spray Paint Artists established in the Regulations or elsewhere in this Section. A vendor may not occupy more than one vending site at any given time. In addition, the VOC shall determine the method for allocating or assigning food vending sites among licensed food vendors and the method for allocating or assigning arts and crafts vending sites among licensed arts and crafts vendors. The mere possession of a valid food or arts and crafts vending or sidewalk cafe license by a vendor shall not in and of itself entitle the vendor to the use of a vending site on a specific day or a minimum number of days during the vending year, and each Mall/Concourse vending license shall be issued subject to the regulations promulgated by the VOC and approved by the Common Council regarding allocation or assignment of vending sites. Failure to become fully licensed and approved or to consistently use the assigned site by May 1st of a given vending year shall be grounds for the site to be assigned to another vendor for the remainder of that vending year.
- Special Saturday vending areas shall be created, by regulation, designating an increased number of vending sites on the Mall/Concourse for use on Saturdays. These vending sites are for crafts and food and will be in addition to the existing vending sites, but will in no way infringe upon the yearly assigned food sites. During Saturday special events, any rules for 'Exclusive Vending Rights' during the special event adopted by the Common Council under Sec. 9.136(1)(k) shall apply to all vendors.
- (g) Mall/Concourse Vending License Required . No person shall sell or offer to sell, any goods, foodstuffs, or any other article of any kind or otherwise conduct any of the activities described in Sec. 9.13(1) on the State Street Mall/Capitol Concourse without holding a valid Mall/Concourse Vending License or being designated as a primary vendor on a valid Mall/Concourse Vending license issued to a corporation, cooperative or partnership, and without all of the other necessary licenses required under this Section or another ordinance or law. A Mall/Concourse Vending license is not required for a vendor participating under Special Event Vending License pursuant to Sec. 9.13(2) herein. Only one Mall/Concourse Vending License in each category listed in Sec. 9.136(1)(h)2., i.e., arts and crafts, food, sidewalk cafe, merchant vendor, may be issued to a vendor for any single vending period. This paragraph shall not apply to vendors operating in late night food vending areas under Sec. 9.136(1)(n).

(h) Mall/Concourse Vending Licenses and Fees.

1. Categories of Mall/Concourse Vending Licenses.

- a. Mall/Concourse Food Vending Licenses issued to food vendors.
- b. Arts and Crafts Vending Licenses issued to arts and crafts vendors.
- c. Sidewalk Cafe Licenses issued to establishments eligible for sidewalk cafes under Sec. 9.135.
- d. Merchant Vendor Licenses issued to contiguously-located, street-level merchants or corresponding non-street-level merchants in the same building by order of priority established in Sec. 9.136(1)(j)4. below.

2. Additional License Requirements for the Mall/Concourse.

- a. Basic License. Food Vendors, Arts and Crafts Vendors and individuals working in those vending sites (except helpers as described in Sec. 9.136(1)(e)1.c.ii.) must also hold a Basic Street Vending license or Umbrella Food Vending License, if applicable, under Sec. 9.13(3). Merchant Vendors and Sidewalk Cafes do not require a Basic Street Vending License.
 - b. Health Licensing. All food vendors required to be licensed under Chapter 7 of the Madison General Ordinances shall obtain the appropriate food and drink license and a mobile restaurant base license and operate from a licensed restaurant for food preparation, food storage and utensil cleaning activities.
 - c. Optional Site Reservation Fee for Arts/Crafts Vendors.
 - i. Saturday-only craft vendors may reserve a site by paying the site reservation fee set forth in Table A in Sec. 9.13. This allows the vendor to reserve a specific vending site until 7:30 a.m. at the Saturday craft vending area, which site shall be assigned to them by the Director pursuant to the regulations on Saturday Vending Site Assignment adopted pursuant to Sec. 9.136(1)(c) and (f).
 - ii. Daily craft vendors may reserve a site by paying the site reservation fee set forth in Table A in Sec. 9.13. This allows the vendor to reserve a specific craft vending site on the 400, 500, and 700 blocks of State Street until 11:00 a.m. each day, which shall be assigned to them by the Director and be subject to the to the regulations adopted pursuant to Sec. 9.136(1)(c) and (f).
3. Fees. The duration, license fees, application and payment deadlines for all Mall/Concourse vending license types are as set forth in Sec. 9.13(1)(a)6, Table A, Street Vending License Types and Fees ("Table A"). Additional information regarding specific license types is below:
- a. Food Vendors. In addition to the annual license in Table A, a pro-rated license is available for the fee shown in Table A for a Mall/Concourse Food Vending license issued November 1 or later to a first-time food vendor, as described in Sec. V.E. of the Regulations Governing Vending on the State Street Mall/Capitol Concourse.
 - b. Sidewalk Cafes. The license fees for sidewalk cafes on the Mall/Concourse are set forth in Sec. 9.135(4), Table B.

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- c. Monthly License. Only arts and crafts vendors are eligible for a Monthly License. Monthly licenses shall expire thirty (30) days from the date of issuance.
 - d. (Reserved for Future Use.)
 - e. Non-Profit Exemption. Qualified non-profit organizations, otherwise meeting the criteria for Mall/Concourse vending, may apply for an annual license under Sub. (h)3.a. and may be exempt from paying the annual license fee, upon approval of the Vending Oversight Committee.
- 4. A licensed Mall/Concourse vendor shall inform the Director of any change of address of the vendor or the primary vendor named on the license, in writing, occurring during the license period.
 - 5. Each Mall/Concourse Vending License shall contain such information on its face as may be required by the Director, by ordinance, and the Regulations for Vending on State Street Mall/Capitol Concourse.
 - 6. The Mall/Concourse Vending License shall be conspicuously displayed by the vendor at all times while vending.
- (i) Procedures For Granting a Mall/Concourse Vending License.
- 1. Application. All applications for a Mall/Concourse Vending License shall follow the procedures set forth hereunder unless a different procedure is established for a particular category of vending. All applications shall be filed by the Application Due Date established in Table A of Sec. 9.13, when applicable.
 - a. Application for a Mall/Concourse Food Vending License or Arts and Crafts Vending License shall be filed with the Director by the Application Due Date established in Table A and shall contain such information as shall be required by regulation and such additional information as they shall require in order to determine whether the requirements of the ordinances have been met. Such additional information may include but shall not be limited to documentation or other evidence, such as invoices for raw materials, demonstrations or explanations of design or production techniques, which evidence or illustrate that the item in question is handcrafted or personally prepared. An application for a Mall/Concourse Food vending license shall not be accepted unless the applicant has first participated in the Food Cart Review set forth in the Regulations Governing Vending on the State Street Mall/Capitol Concourse.
 - b. Application for a Merchant Vendor License shall be filed with the Director using the process designated for that purpose. All applications shall be accompanied by a photograph, catalogue page(s) or detailed renderings of the tables, or other furniture or equipment being considered for use, including the location and number, and any additional information required by the Regulations Governing Vending on the State Street Mall/Capitol Concourse. The application shall also contain any information required by regulation or by the Director.
 - c. Application for a Mall/Concourse Sidewalk Cafe License shall be made according to Sec. 9.135.
 - 2. Initial Determination Appeal and Review. Upon receipt of an application for a license the Director, shall review all applications for a vending license under this Section for

compliance with the applicable ordinance(s) and regulations, and shall make a determination using the procedures below:

- a. Upon receipt of a completed application, if all the applicable requirements are clearly and unambiguously met in the opinion of the Director, and all applicable fees paid, the appropriate license shall be promptly approved and issued.
 - b. If the Director determines that the applicable requirements of the ordinance and regulations are not met, they shall deny the license and state the reasons in writing to the applicant within ten (10) business days of the date of the application. The applicant may re-apply in order to address the reasons for denial, or may appeal the denial to the Common Council by filing a written notice of the appeal with the Director, within five (5) days of the Director's written determination. The Director shall refer the appeal to the VOC for a hearing. The applicant shall be notified in writing of the time, date and place of the hearing at least ten (10) days prior to the hearing, unless both parties agree in writing to shorter notice.
 - c. The sole issue at the hearing shall be whether the correct decision was made by the Director, based on the information contained in the application and any supporting documentation submitted with it. New or additional information shall not be grounds for an appeal and any such information shall not be allowed at the hearing. Such information, however, may be the basis of a re-application to the Director under this Section. The parties shall have the opportunity to question witnesses, may call witnesses on their behalf, and may be represented by counsel. All testimony shall be recorded. The Committee shall report its findings and recommendations in writing to the Common Council which shall convene to consider the report and recommendations. After due consideration of the Committee's report and any evidence presented, the Common Council may by majority vote affirm, reverse, or modify the decision of the Director and shall issue its decision in writing. If no decision is made within sixty (60) days from the date of filing the Notice of Appeal, the appeal shall be deemed denied. If the application is approved, the Director shall sign the application and the license shall be issued upon proper payment of fees.
 - d. The decision of the Common Council shall be a final determination and shall be subject to review in court as may be provided by law. Any person aggrieved by the decision may seek review thereof within thirty (30) days after the date of the final determination.
 - e. Any approval by the Director, or Common Council of any category of Mall/Concourse vending license shall be deemed to be a conditional approval in the absence of any approval by other necessary City agencies.
3. Renewal of Mall/Concourse Vending Licenses, Consequences for Past Violations. There shall be no renewal of any Mall/Concourse Vending License except where expressly stated for monthly licenses. All applicants shall follow the process above each year for granting an initial license. The following applies to applicants with citations or civil complaints within the previous vending year:
- a. Any Mall/Concourse license holder who applies for a Mall/Concourse Vending license and has been issued two (2) or more citations or civil complaints for vending-related ordinance violations within the previous vending year must

appear before the VOC prior to any action by the Director on their application, for the purpose of a formal expression of concern by the VOC, at which the applicant shall be required to present a detailed plan for preventing such violations in the future. If the applicant fails to appear after service of written notice to appear, no further action may be taken by the Director and the license shall be deemed denied.

- b. If the applicant has committed three (3) or more vending-related offenses in the previous vending year as charged in citations or civil complaints, the Director may deny a request for a Mall/Concourse vending license based on the number, nature and seriousness of the offenses committed. Such determination may be appealed pursuant to Sec. 9.136(1)(i)2. above.

(j) Miscellaneous Restrictions on Merchant Vendors .

1. Miscellaneous Restrictions on Merchant Vendors .

- a. Merchandise may only be displayed during normal business hours when the merchant's corresponding place of business is open.
- b. Merchandise may only be displayed in specific sites defined by the street frontage of the street level merchant's place of business and otherwise complying with the requirements of Sec. 9.13, no closer than seven (7) feet to the building face, allowing a minimum of seven (7) feet unobstructed pedestrian walkway and no closer than two (2) feet from the face of the adjacent street curb on the other side in the specific location, with the configuration approved on the application pursuant to Sec. 9.136(1)(i). This requirement applies to vending on State Street and the sidewalks on the outside of the streets comprising the Capitol Square.
- c. (Reserved for Future Use.)
- d. An attendant or sales person shall either be present within the approved merchant vending site at all times at which items are displayed or sold or immediately available within the corresponding place of business. In addition to other requirements herein, the merchant vending site and merchandise displayed therein shall be maintained in an orderly and organized fashion.

2. (Reserved for Future Use.)

3. (Reserved for Future Use.)

4. Assignment of Merchant Vendor Sites Among Street-Level and Non-Street Level Businesses

- a. Merchant vendor site eligibility shall be determined as follows:
 - i. Contiguous Street-Level Businesses. A contiguously-located, street-level merchant, as defined in Sec. 9.136(1)(e)2.a., shall apply for the appropriate merchant vendor license and site by the deadlines in Sec. 9.13(1), Table A. The site shall be assigned to that merchant if all other applicable licensing criteria is met.
 - ii. Corresponding Non-Street Level Businesses. If a merchant or sidewalk cafe' vending site is not approved for the street-level business by April 1, any merchant or establishment eligible for a sidewalk cafe in the building, including non-street level businesses defined in Sec. 9.136(1)(e)2.b. may

apply for the appropriate license and site. Site assignments shall be issued on a first come, first served basis. In the event that more than one such application is received for the same sidewalk site on the same day, the site shall be assigned by lottery by the Director.

- iii. Multiple Addresses. Merchants with a business space that has multiple street addresses must choose only one address (and corresponding street frontage) for a merchant vending site. If multiple business tenants use the same street addresses, the site(s) shall be allocated among street-level and non-street level businesses as described above.

(k) Vending During Street Use Events.

- 1. Special Event Vending Approvals. When a Street Use Permit is requested under Sec. 10.056 (a "street use event"), the applicant may request one or more of the following special approvals: invalidation of street vending licenses and Sec. 9.54 permits, permission to select participating vendors for the event, and suspension of some or all restrictions on street vending under this Section, Secs. 9.13 and 9.135 (collectively, "approvals"), using the procedures below. Any approvals under this Section are subject to the issuance of a valid Street Use Permit for the event.

- a. Invalidation of Vending Licenses. To encourage the integrity, comprehensiveness and success of a street use event taking place on any street, alley, sidewalk or public square in the City, the applicant may request that some or all categories of street vending license(s) or permits issued under Sec. 9.54 ("licenses") will not be valid within the perimeter of the street use event. Invalidation of licenses shall only occur within the perimeter approved in the Street Use Permit. Invalidation shall not be approved more than ten (10) times per year at the same location (i.e. same street block). Invalidation of licenses is not available for serial street use permits of more than five (5) days.

When licenses are invalidated, street vendors or permit holders under Sec. 9.54 ("licensees") whose licenses have been invalidated cannot conduct the activities authorized by their license in anywhere within the perimeter of the event, unless selected by the event sponsor under Sec. 9.136(1)(k)1.b. ("Selection of Vendors"). Licensees with assigned sites inside the event perimeter cannot operate from the assigned site during the event. Such licensees may operate outside the event perimeter only as follows: by moving into an unoccupied vending site outside the event perimeter if allowed for that type of vending elsewhere in Sec. 9.13, by following any applicable procedures for relocating under Sec. 9.54, or if the City assigns the licensee a temporary site under Sec. 9.136(1)(k)3.

- b. Selection of Vendors. A street use applicant may request permission to select vendors to participate in the applicant's event. If approved, the event sponsor must obtain a Special Event Umbrella Vending License under Sec. 9.13(2) covering all persons selling food or any other item as part of the event, if required to be listed on such license by Sec. 9.13(2).
- c. Suspension of Rules. A street use applicant may request suspension of specific provisions of Sec. 9.13 or the regulations adopted thereto within the perimeter and for the duration of a street use event, and may request alternate vending rules for the event. This option is available for events held anywhere in the City where an ordinance restricts vending to certain types of food or articles, or only from assigned sites. It is not necessary to suspend the rules regarding vending

equipment size or placement for vendors operating under a special event umbrella license within the perimeter of a street use event, however, all applicable state and local health, electrical and fire code provisions will continue to apply and cannot be suspended under this procedure. If granted, the rules and procedures approved through this process will control over any conflicting section of Sec. 9.13 or the Regulations.

- d. 700-800 Blocks of State Street - Suspension of Rules. Certain vending rules may be suspended by the Street Use Staff Commission for street use events held entirely within the "podium area" of the 700 block of State Street, or anywhere in the 800 block of State Street. The Street Use Staff Commission may approve the suspension of portions of Sec. 9.13 and the Mall/Concourse Regulations to allow vending of non-personally prepared food and non-handcrafted items within the event. The street use applicant must demonstrate that vending such items is necessary to ensure the integrity and success of the event. If granted, suspension of rules under this paragraph shall be indicated on the street use permit and does not require Common Council approval.

2. Special Approvals Process.

- a. Street Use Applicants seeking any of the approvals in Sub. 1. shall so indicate on their street use permit application. Applications requesting special approvals for this first time are due ninety (90) days prior to the event start date. Applicants for events that have received prior approval under this Section shall notify the Parks Division of their intent to repeat the event as soon as possible during the calendar year.
- b. The Parks Division shall prepare each year, prior to the event season, one or more resolutions for the Common Council listing all known events for the calendar year seeking special approvals under this Section and the type of approval(s) requested. (Events seeking approval under Sec. 9.136(1)(k)1.d. for the 700 or 800 block of State Street need not be included). The resolution shall include sufficient details for the Council to consider the requested approvals, and additional details about first-time events if deemed necessary by Parks Division.
- c. The Common Council shall consider the requested approvals not less than fourteen (14) days prior to the event start date. If license invalidation is requested under Sec. 9.136(1)(k)1.a., the applicant shall provide at least one (1) week's written notice of the Common Council meeting to the Director (to the attention of the Street Vending Coordinator), any licensed street vendors (including merchant vendors and sidewalk cafes) with assigned sites in the event perimeter, and any Sec. 9.54 permit holders with assigned sites in the event perimeter. The notice shall include all of the details required for the resolution and information about participating in the event including fees. The Common Council may grant the approvals authorized in Sec. 9.136(1)(k)1.a., b., and c. after making a finding that the requested approval(s) are necessary to maintain the integrity, comprehensiveness and success of the special event. License invalidation shall not be approved unless the applicant also satisfactorily demonstrates and the Council finds that special conditions exist warranting the exclusive vending rights. The Street Use Permit issued by the Street Use Staff Commission shall include a reference to the approvals granted by the Common Council.

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3. Relocating Vendors Outside Event Perimeter. Whether or not invalidation of licenses under Sec. 9.136(1)(k)1.a. has been granted, the Director may relocate vendors or Sec. 9.54 permittees ("licensees") with assigned sites within the perimeter of a street use event to a location outside the event perimeter, to avoid interference with the event. Any such relocated sites shall be in addition to existing vending or Sec. 9.54 sites that have not been invalidated.
 4. Prohibition Against Vending During Street Use Event.
 - a. No person holding a street vending license of any kind may conduct the activities authorized by their license if their license has been invalidated under Sec. 9.136(1)(k)1.a., or otherwise in violation of the special vending approvals granted under Sec. 9.136(1)(k)1. This prohibition does not apply to licensees who have been selected by the event sponsor to participate in the event, or relocated outside the perimeter of a street use event under Sub. 3. above.
 - b. No person shall conduct any street vending activity within the perimeter of a street use event unless the vendor is covered by the sponsor's special event vending license, or the vendor was selected by the sponsor to vend at the event using the vendor's existing street vending license as allowed in Sec. 9.13(2).
- (I) Miscellaneous Vending Restrictions.
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).
 - b. Permitted hours in the Late Night Vending areas shall be 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 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. Use of Electricity. Only Mall/Concourse Food or Arts/Crafts vendors are eligible to use City electricity for their vending operations, consistent with this Section, the regulations adopted hereto, and any rules and regulations of the City Traffic Engineer including the fee schedule.
 - a. Vendors shall only be eligible to use the City's 110 volt outlets.

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- b. Vendors using the City's AC electrical outlets shall have a circuit breaker installed in accordance with the National Electrical Code (NEC) not exceeding 15 amps on line between the appliance and the power source (City electric receptacle).
 - c. Generators. Vendors may use one generator in lieu of an AC electrical source. Generators must operate at 60 decibels or lower.
 - d. All electrical equipment and wiring in a vending cart, regardless of whether powered by AC or a generator, shall comply with the NEC (National Electrical Code). Vendors shall follow any other regulations for electrical use in the "Regulations Governing Vending on the State Street Mall/Capitol Concourse."
 - e. Vendors using the City's AC electrical outlets shall pay the fee established by the Traffic Engineering Division or otherwise established by the City for such electrical use.
 - f. Licensed Sidewalk Cafes may use their own electrical power only as set forth in Sec. 9.135 and shall not use any City of Madison power source.
3. Emergency Vehicle Access. Vending sites in the 700 and 800 blocks of the State Street Mall shall be located in such a manner that an emergency vehicle access lane at least eighteen (18) feet wide and continuous over the entire length of the 700 and 800 blocks of the State Street Mall shall be maintained at all times and shall be kept clear of all obstructions.
4. Relocation of Vendors. The Director of Planning and Community and Economic Development and the Chief of Police, or designees, have the authority to relocate designated vending sites elsewhere on the State Street Mall/Capitol Concourse or to eliminate them in the interest of public safety during construction or emergencies and as elsewhere provided in these ordinances. If the Superintendent of Parks or designee requires relocation or elimination of a vending site for maintenance, cleaning or construction on the Mall/Concourse, they shall notify the Department of Planning and Community and Economic Development. The Superintendent of Parks, with approval of the Director of Planning and Community and Economic Development, may relocate vending sites and create additional, temporary sites in this vending area when deemed in the best interests of the City, however this procedure shall not be used in place of any of the procedures in Sec. 9.136(1)(k). Any vendor operating in such temporary sites must hold all licenses required for vending in the relocated or temporary site and, if applicable, pay any additional daily license fee established by the City.

Any change to a Sidewalk Cafe's Roadway Cafe Expansion license by any persons authorized in this Section shall also require a change to the Roadway Cafe Permit approved by the Traffic Engineer under Sec. 10.30. Nothing in this Section shall be construed to limit the authority of the police to temporarily relocate or eliminate a vending site in the case of an emergency.

5. Changes to Vending Site Dimensions. The approved dimensions of any type of Mall/Concourse vending site are not guaranteed to remain available. Public construction, street improvements or redesign may result in a vending site being moved, reduced in size or eliminated at any time. All vending site dimensions are subject to change if the City makes changes to the construction of the sidewalk and/or streetscape that affect the vending site, including but not limited to the addition or removal of planters, trees, benches, bike racks, bus shelters, sculptures, or any other public amenity.

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6. Snowfall Procedures for Mall/Concourse Vendors and Late Night Vendors. The following procedures apply to Food, Arts and Crafts, and Merchant Vendors, Late Night Vendors in the 500 block of North Frances Street (Concrete Park), and any other LNV site on a sidewalk or sidewalk area. Snowfall procedures for sidewalk cafes are in Sec. 9.135(10). In this Section "Vendor" shall refer to the license holder of any of these license types and "site" shall refer to the vendor's assigned vending site or the approved location of furniture, tables, enclosures, other approved equipment, and the approved perimeter of a sidewalk cafe or merchant vendor.

- a. Snow Removal. If any Vendor's site has accumulated snow and ice and the vendor wishes to set up the site, the Vendor must clear all snow and ice from the site before placing the cart or any other equipment in the site.

Food and Arts and Crafts Vendors may not use another site nor otherwise alter the position of the cart or table from its approved position within the vendor's assigned site. Sidewalk cafes and Merchant Vendors shall not modify the approved perimeter or location of equipment within their approved site.

Vendors with sites on the Capitol Concourse or Municipal Building Vending Area shall push the snow toward, but not into, the road.

Vendors shall keep a four foot (4') perimeter around the vending cart, other vending equipment, and Merchant Vendor equipment clear from accumulating snow and ice at all times.

- b. Snow Emergencies. Mall/Concourse Licensed Vendors, Late Night Vendors in the 500 block of North Frances Street (Concrete Park) and any other LNV site on a sidewalk or sidewalk area, shall not vend, set up any equipment or otherwise operate in their site on any day when the City has declared a snow emergency under Sec. 12.045(1).

- c. Street Vending Snow Day. The Superintendent of Parks or designee (Superintendent) may declare a "street vending snow day" when a full snow emergency under Sec. 12.045 has not been declared but additional time is needed for city staff to safely remove snow and ice from the streets and sidewalks within the Mall/Concourse Vending Area. When a Street Vending Snow Day has been declared, one or both of the following may occur:

- i. Delayed set-up. Mall/Concourse Vending carts or equipment of any kind cannot be placed before 11:00 a.m. or a later time if deemed necessary by the Superintendent and vendors are notified according to the procedure below. Such notification may extend for the entire day.
- ii. Early Closing for Sidewalk Cafes. The Superintendent may also determine that Sidewalk Cafes must close and remove all equipment from the sidewalk by 12:00 a.m. to facilitate snow removal overnight.

The Parks Division will announce the snow day and the specific restrictions above no later than 8:00 a.m. of the affected day by:

- A. Emailing a current list of all affected vendors provided by the Director, and
- B. Using a call-in telephone number or similar technology established for this purpose.

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- d. An approved snow removal plan may be required by the Mall Maintenance Supervisor, Streets Superintendent, or both, for a Regular Mall/Concourse sidewalk cafe. Mall/Concourse Licensed Vendors shall comply with all provisions of their approved snow removal plan (if any) when required. In the event of a conflict between the snowfall procedures set forth above and an approved snow removal plan, the approved snow removal plan shall apply.

(m) Waiver, Indemnification and Insurance.

1. Waiver. The licensee agrees that the City shall not be held responsible for any damage to the licensee's property that may be caused by City, its employees, contractors or others.
2. Indemnification. To hold a valid license, the licensee shall agree to indemnify, defend, and hold the City, its officers, officials, employees and agents harmless against all claims, liability, loss, damages, penalties, and expenses, including attorney's fees, incurred by the City as the result of any injury to or death of any person or damage to property caused by or resulting from the activities for which the license is granted, whether caused by or contributed to by the City or its officers, officials, agents or employees.
3. Insurance. The licensee shall be required to furnish a Certificate of Insurance, providing evidence of commercial general liability insurance with the City of Madison, its officers, officials, agents and employees listed as additional insureds, in a form approved by the City Risk Manager. The insurance shall include contractual liability coverage, apply on a primary and non-contributory basis, with minimum limits of one million dollars (\$1,000,000) per occurrence. The Risk Manager reserves the right to require higher limits and other coverage terms and conditions at their discretion. The Licensee shall keep required insurance in full force and effect for the duration of the license. Persons acting solely as the primary designated vendor when the licensee is a corporation, cooperative or partnership, Arts/Crafts assistants defined in Sec. 9.136(1)(e)1.c.i., and supplemental food vendors and helpers defined in Sec. 9.136(1)(e)1.c.ii. are not required to provide separate proof of insurance.

(n) Late Night Vending (LNV) Areas.

1. Certain areas within the Mall/Concourse and downtown area are established for vending food and drink between the hours of 9:00 p.m. and 4:00 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.

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 the food cart review. Vendors operating as licensed Late Night 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.

2. Licenses Required, Eligibility. Beginning with the 2018-2019 vending season, only those applicants who held a valid Late Night Vending License during the 2016-2017 or 2017-2018 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.

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 under Sec. 9.13(3).

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

3. Late Night Vending Areas.

- a. Creation of Site or Zones. Beginning with the 2018-2019 vending season, the Director, with the written approval of the Chief of Police or designee, may establish 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. 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.

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 or zones for such purpose with the written approval of the Chief of Police or designee.

- c. Library Mall Night Vending Area. Beginning with the 2023 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 (aka Library Mall) 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 2023 season.
4. Application, Site Assignment. Applicants holding a basic street vendor license 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 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 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 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 application and the LNV license used for seniority must be the same. If more than one applicant was issued an LNV 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. In addition, the Designee of the department 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 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.

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- 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 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, 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 license is required herein without having been issued a valid LNV license, and no person shall vend in any LNV zone or 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 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).
- (2) Enforcement; Penalties. The Director is authorized to enforce Sec. 9.136 and any regulations adopted hereto. Any person violating any provision of Sec. 9.136 or the regulations adopted hereto shall be subject to a forfeiture of not less than thirty dollars (\$30) nor more than three hundred dollars (\$300) for each separate violation of the ordinance or regulation. Enforcement of this Section shall not bar proceedings under Sec. 9.13(8), "Procedure for Revocation, Suspension or Nonrenewal of Vending License," nor shall proceedings under Sec. 9.13(8) bar the City from prosecuting violations of Sec. 9.136.

(Cr. by ORD-22-00015 , 4-7-22)