

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: November 17, 2015

**MEMORANDUM**

TO: Mark Woulf  
Food and Alcohol Policy Coordinator

FROM: Michael P. May  
City Attorney

RE: Options for Implementation of Public Market

The City of Madison is considering funding the construction of a public market. The market would be on City land and the City would own the building, leasing it to a number of commercial vendors for sale of goods.

You asked for advice on the transition from the first stage, where the City funds and constructs the building, and the second stage, where vendors are on site, having leased space, and selling goods.

There are myriad ways of getting from constructed building to operating public market. I will touch on a few that might be most likely to work.

**1. Operation by the City.**

This would be the most direct way of operation. The City, as owner of the facility, would undertake the management of the public market, much as the City operates the Monona Terrace Community and Convention Center. A board could be established, and staff hired to operate the market. The City would enter into leases with those who wished to sell at the market.

Whether the City wishes to do so or not is a policy question. A person could certainly develop a long list of pros and cons of such operation

**2. City lease to operator through an RFP process.**

Under this model, the City would seek an operator through a RFP process. The City would determine what characteristics it wanted in an operator, including the make-up of the Board, the terms of a lease from the City to the operator, any standard provisions required of leases between the operator and the tenants, reporting requirements, financial requirements, etc. The City would evaluate the responses – which, presumably, could include a nascent group that would make the necessary legal

formative steps after winning the award – and then select one person or group or company to operate the public market.

This process would resemble that done for the grocery in the Allied Drive neighborhood.

### **3. City lease to chosen operator.**

You suggested to me that the City might have a certain group or potential group that it desired to operate the public market. If this were the case, the City has the right by resolution to dispense with any competitive process and award the lease to a specific group. However, this sort of process must be handled carefully. For example, City staff (including the City Attorney) might be able to provide some technical assistance to a group wishing to form to operate the public market, but if the group is to be independent rather than just a form of the first option, then they must have their own attorney, financial and business advisors. The City cannot be in the position of advising the third party on these matters at the same time the City is negotiating the lease terms with the new entity. City involvement may turn the entity into a quasi-governmental corporation, making it subject to public records and open meetings laws.

Unless the entity chosen in this process by the City was an existing business or non-profit operation, this option could become the most complicated in terms of the interactions between the City and any newly formed operator.

### **4. Some combination or phasing.**

The City might decide on some combination or phasing of the above approaches. For example, maybe the City operates the market for a brief time through a hired consultant, but then turns it over to a new operator.

Or, as another option, the City could seek an operator for the market through an RFP, with the knowledge that the chosen operator might be nothing more than a proposed organization. Without actually attempting to set up the new organization, the City could assist the organization in establishing its form and legal status, and make suggestions as to potential members of the Board of Directors. This could include a 6-8 month period in which the chosen operator is formed and gets on its feet, before any formal arrangements for leasing are prepared. The possibility of this sort of arrangement – or other arrangements – could be set out in the RFP.

Let me know if you have any other questions.

CC: Kevin Ramakrishna