

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4224

Authorizing a temporary land use permit with South Madison Farmer's Market, LLC for a farmer's market at the Village on Park.

Presented May 11, 2017
Referred
Reported Back
Adopted May 11, 2017
Placed on File
Moved By Gilmore
Seconded By Daine
Yeas 4 Nays 0 Absent
Rules Suspended

WHEREAS, the CDA is the owner of certain real property located at 2300 South Park Street, Madison, Wisconsin (the "Property"), more particularly described in the attached Exhibit A; and

WHEREAS, the Property is improved with a commercial building known as The Village on Park (the "Building"); and

WHEREAS, South Madison Farmer's Market, LLC (the "Permittee") would like to have a farmer's market situated at the southeast area of the Property; and

WHEREAS, the parties agree to enter into this agreement to set forth the terms and conditions of the Permittee's use of such space.

NOW THEREFORE BE IT RESOLVED that the Community Development Authority of the City of Madison (the "CDA") hereby authorizes a temporary land use permit (the "Permit") with South Madison Farmer's Market, LLC (the "Permittee") within the Village on Park on the following terms and conditions:

- 1. Premises. The CDA hereby grants the Permittee the right to occupy and use the Premises, the location of which is denoted on the attached Exhibit A, pursuant to the provisions herein.
2. Term. This Permit shall be for Fridays only during the term commencing on May 26, 2017 and expiring on October 27, 2017 (the "Expiration Date"), unless terminated earlier in accordance with the provisions herein.
3. Hold Over. The Permittee shall surrender the Premises upon the Expiration Date or termination of this Permit.
4. Use. The Permittee will occupy and use the Premises as a temporary event space, limited to activities involving a farmer's market during the Term, and for no other purposes whatsoever without the CDA's prior written consent.
5. Fee. No fee is payable under this Permit.
4. Maintenance. The Permittee shall, at their own expense, keep and maintain the Premises in a clean and presentable condition and in a manner consistent with the preservation and protection of the general

appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, removal of garbage and debris immediately after each event.

Notwithstanding the foregoing, the Permittee shall be responsible for the cost and expenses of any repairs/replacements to the Premises required by reason of acts or omissions of the Permittee, their employees, agents, invitees, vendors, licensees or contractors. No tents are allowed that involve staking to the asphalt.

5. Special Conditions.

- a. The Permittee accepts the Premises in “as-is” condition. Any modifications to the Premises by the Permittee shall be subject to the prior written approval of the CDA and shall be at the Permittee’s sole cost and expense.
- b. The Permittee shall be responsible for any extraordinary costs resulting from its use of the Premises (e.g., security services, etc.).
- c. The Permittee shall be responsible for keeping the Premises secure.
- d. No exterior storage of materials, equipment or vehicles is permitted on the Premises, except the temporary and orderly placement of items in conjunction with maintenance or repair activities.
- e. All property belonging to the Permittee, its employees, agents and invitees shall be at the risk of the Permittee, and the CDA shall not be liable for damage thereto nor theft or misappropriation thereof, unless caused by the negligence of the CDA, its employees, contractors or invitees.

6. Insurance. The Permittee shall procure and maintain during the term of this Permit Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the City of Madison’s Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Permittee’s coverage shall be primary and list the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents and employees as additional insureds. The foregoing insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII. As evidence of this coverage, Permittee shall furnish to the CDA a certificate of insurance on a form provided by the CDA showing the type, amount, class of operations covered, effective dates, and expiration dates of the required policy. The Permittee shall provide the certificate to the CDA upon execution of this Permit, or sooner, for approval by the City of Madison’s Risk Manager. The Permittee shall provide copies of additional insured endorsements or insurance policies, if requested by the City of Madison’s Risk Manager. The Permittee and/or their insurer(s) shall give the CDA thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the foregoing policies during the term of this Permit.

7. Indemnification. The Permittee shall be liable to and agree to indemnify, defend and hold harmless the CDA, the City of Madison, Wisconsin and their respective officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney’s fees) by reason of any claim or suit, or of liability imposed by law upon the CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Permittee or their officers, officials, agents, employees, assigns, sublessees or subcontractors, in the

performance of this Permit, whether caused by or contributed to by the negligence of the CDA, the City of Madison, Wisconsin, or their respective officers, officials, agents or employees.

8. Hazardous Substance. The Permittee represents and warrants that its use of the Premises will not generate any hazardous substance, and they will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease, or damage to or loss of use of real or personal property.
9. Default. In the event of the Permittee's default hereunder and the Permittee's failure to cure the same within five (5) days after the CDA gives the Permittee written notice thereof, the CDA, shall pursue all other rights and remedies accorded by law or in this Permit..
10. Assignment. The Permittee shall not assign this Permit or allow any other persons or entities to use the Premises, or any portion thereof, without the prior written consent of the CDA, which consent the CDA may withhold in its sole discretion.
11. No Waiver. Failure or delay on the part of any party to enforce any of the terms, covenants, conditions of this Permit shall not operate as a waiver thereof nor void or affect the right of the party to enforce the same upon any subsequent default or breach. Except as otherwise provided in this Permit, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rules of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.
12. Removal and Disposal of Personal Property. Upon the expiration or termination of this Permit, the Permittee shall remove all personal property from the Premises. If the Permittee leaves any personal property on the Premises, the CDA shall have the right to dispose of said property, without liability, thirty (30) days after the Permittee vacates the Premises.
13. Signs. Subject to the prior written approval of the CDA, the Licensee shall be permitted to erect a two-sided A-Frame identification sign (2' x 3') on the Property as depicted on Exhibit A. Such sign must conform with the provisions of Chapter 31, Street Graphics Control, Madison General Ordinances and not be in the public right-of-way.

BE IT RESOLVED that the Secretary is hereby authorized to execute and deliver the Permit, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution in a form authorized by the City Attorney.