

## PLANNING DIVISION STAFF REPORT

June 24, 2019

PREPARED FOR THE PLAN COMMISSION



**Project Address:** 2609 E Washington Avenue (District 6 - Ald. Rummel)  
**Application Type:** Conditional Use  
**Legistar File ID #** [55908](#)  
**Prepared By:** Sydney Prusak, Planning Division  
Report Includes Comments from other City Agencies, as noted  
**Reviewed By:** Kevin Firchow, AICP, Principal Planner

### Summary

**Applicant/Owner:** Bill Rogers; Brewers Showcase Inc. dba The Malt House; 2609 E Washington Avenue; Madison, WI 53704

**Requested Action:** The applicant requests approval of a conditional use for free-standing vending on a property zoned CC-T (Commercial Corridor - Transitional District) within 200 feet of a residential use at 2609 E Washington Avenue.

**Proposal Summary:** The applicant proposes to have free-standing vending in the Malt House parking lot located at 2609 E Washington Avenue. As proposed, there will typically be one vendor on site, with certain special event days that will have up to five vendors.

**Applicable Regulations & Standards:** This proposal is subject to the standards for Conditional Uses [MGO §28.183] as MGO §28.061(1) lists *free standing vending* as conditional uses in the Commercial Corridor – Transitional (CC-T) District. The Supplemental Regulations [MGO §28.151] contain further regulations for this use.

**Review Required By:** Plan Commission. The Urban Design Commission (UDC) Secretary administratively reviewed this request on behalf of the UDC.

**Summary Recommendation:** The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Uses are met and **approve** the request for free-standing vending on a property zoned CC-T (Commercial Corridor Transitional District) at 2609 E Washington Avenue. These requests are subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

### Background Information

**Parcel Location:** The subject site is located on the northeast corner of the intersection of East Washington Avenue and Milwaukee Street. The site is within both Aldermanic District 6 (Ald. Rummel) and the Madison Metropolitan School District.

**Existing Conditions and Land Use:** The 16,180-square-foot (0.37-acre) subject parcel is zoned CC-T and developed with a tavern, outdoor eating area, and parking lot.

### Surrounding Land Use and Zoning:

- North:** A small mixed-use building and single-family residence, zoned CC-T. There is a row of single-family residences to the northeast along Union Street, zoned Traditional Residential – Consistent 4 (TR-C4);
- East:** A small mixed-use building zoned CC-, with single-family and two-family residences, zoned Traditional Residential – Varied 1 (TR-V1) beyond;
- South:** Across Milwaukee Street is the Union Corners mixed-use development, zoned Planned Development (PD) district; and
- West:** Across E Washington Avenue is a multi-tenant commercial building, zoned CC-T.

**Adopted Land Use Plan:** The [Comprehensive Plan \(2018\)](#) recommends Community Mixed Use (CMU) for this property. The [Darbo-Worthington-Starkweather Neighborhood Plan \(2017\)](#) mentions that E Washington Avenue at Milwaukee Street is one of the most highly visible and heavily traveled intersections on the city's east side, and calls for an anchor four-story mixed-use building at that corner.

**Zoning Summary:** The project site is currently zoned Commercial Corridor – Transitional (CC-T).

| Site Design                | Required                  | Proposed             |
|----------------------------|---------------------------|----------------------|
| Number Parking Stalls      | 15% of capacity (90) = 13 | 14                   |
| Accessible Stalls          | 1                         | 1                    |
| Loading                    | None                      | None                 |
| Number Bike Parking Stalls | 5% of capacity (90) = 5   | 15                   |
| Landscaping                | Yes                       | Existing landscaping |
| Lighting                   | Yes                       | Existing lighting    |
| Building Forms             | Yes                       | Existing building    |

|                                    |                       |
|------------------------------------|-----------------------|
| <b>Other Critical Zoning Items</b> | Urban Design (UDD #5) |
|------------------------------------|-----------------------|

*Table Prepared by Jacob Moskowitz, Assistant Zoning Administrator*

**Environmental Corridor Status:** The subject site is not located in a mapped environmental corridor.

**Public Utilities and Services:** This property is served by a full range of urban services.

## Project Description

The subject property is currently developed with a tavern, outdoor eating area, and parking lot. The applicant, The Malt House, owns and operates the existing business and is applying for a conditional use to allow free-standing vending within 200 feet of a residential use. According to MGO §28.211, free-standing vending is defined as, “the activity of selling or offering for sale any foodstuffs by placing a cart or equipment on private property; preparing food, beverage or articles for sale; or in any other manner participating in the vending operation or attempting to publicly sell or offer for sale any foodstuffs from private property.” There are residential uses directly north and east of the parking lot, where the vending is proposed.

According to the submitted materials, the applicant will typically have one vendor on Thursdays, Fridays, and Saturdays from 5:00 p.m. to 8:00 p.m., but requests the ability to have vendors from 7:30 a.m. to 11:30 p.m. seven days a week. According to the applicant, there will be times that more than one vendor is on the premise, including community fundraisers (one to three vendors, up to six times per year) and festival style events (two to five

vendors, twice a year). It is important to note that customers will not be able to bring their alcoholic beverages with them in line when they are ordering and waiting for their food, as the carts will be outside the approved alcohol-permitted area for the tavern. As proposed, none of the potential vendors will have any affiliation with the tavern, in terms of food production and sales. Furthermore, no change in capacity for the tavern is requested at this time. Lastly, no amplified sound is proposed in the parking lot as it is outside the permitted outdoor eating area.

The applicant has highlighted the parking stalls that the vendors will typically occupy on the submitted site plan for review. Vendors with curbside windows will primarily utilize the vehicle stall north of the accessible van access aisle, and vendors with street-side windows will primarily utilize the first stall on the east side of the parking lot. However, the applicant requests that the applicant be allowed to park anywhere in the lot so long as it does not interfere with the accessible stall. Vendors are expected to be self-sufficient and provide their own generating power.

## Project Analysis and Conclusion

This proposal is subject to the standards for Conditional Uses (MGO §28.183) as MGO §28.061(1) lists *free standing vending* as a conditional use in the Commercial Corridor - Transitional (CC-T) District. In regards to the approval standards, the Plan Commission shall not approve a conditional use without due consideration of the City's adopted plan recommendations, design guidelines, and finding that all of the conditional use standards of MGO §28.183(6) are met.

### Conformance with Adopted Plans

The [Comprehensive Plan \(2018\)](#) recommends Community Mixed Use (CMU) for this property. The CMU category includes existing and planned areas supporting an intensive mix of residential, commercial, and civic uses serving residents and visitors from the surrounding area and the community as a whole. Staff believes that this use further diversifies the mix of commercial uses in the Comprehensive Plan's CMU-designated area. Furthermore, the [Darbo-Worthington-Starkweather Neighborhood Plan \(2017\)](#) calls for an anchor four-story mixed-use building at this corner, as the East Washington Avenue and Milwaukee Street intersection is one of the most highly visible and heavily traveled intersections on the city's east side. While this proposal does not further that recommendation, the Planning Division believes that because this proposal complements an existing commercial use, and is not a permanent fixture (i.e. a new building or structure), it will not preclude future development at this intersection.

### Conditional Use Standards

The Planning Division believes that this proposal can be found to meet the Conditional Standards of Approval. Given that there is an existing conditional use for a tavern and outdoor eating area on the site, and the applicant is not requesting a change in capacity, staff does not anticipate that the addition of up to five food carts a few times a year will substantially impact neighboring properties. Furthermore, no outdoor amplified sound, outside of the permitted outdoor eating area, is proposed. The Planning Division recommends that this be formalized as a condition of approval. Lastly, staff notes that East Washington Avenue is classified as a Primary Arterial Street, and Milwaukee Street is classified as a Standard Arterial Street. Deference is given to the Zoning Code's Supplemental Regulations for free-standing vending, which is discussed below.

## Supplemental Regulations

MGO §28.151 contains further regulations for free standing vending, specifically the requirement that in non-residential districts, free-standing vending is a conditional use if located 200 feet or less from a property line of a lot with residential use, such as those immediately north and east of the subject parcel. The Supplemental Regulations also include regulations regarding hours of operation, site plan approval, and the necessary vending and food and/or beverage licensing. As previously mentioned, the applicant requests the ability for vendors to operate between the hours of 7:30 a.m. and 11:30 p.m., including set up and take down, which is in keeping with the Supplemental Regulations. Staff acknowledges that vendors will primarily operate within more limited hours, and believes that the proposed hours of operation can meet the Conditional Use Standards.

Furthermore, the Supplemental Regulations state that operators of free-standing vending operations must obtain an approved site plan from the City showing the location of the vending operation on the property in relation to the existing parking lots, streets, driveways, and public rights of way. As a condition of approval, the applicant shall work with Planning, Zoning, Fire, and Traffic Engineering to determine the exact location of the vendors in order accommodate the maximum number of proposed vendors (five). Lastly, in terms of vending and food and beverage licensing, as the vendors will be private entities with no association to the tavern, the onus will fall on the vending operators to obtain the applicable and necessary licenses.

## Public Input

The Planning Division received a letter of support from the Schenk-Atwood-Starkweather-Yahara (SASY) Neighborhood Association. The SASY Board feels that, “the addition of intermittent vending cards holds nothing but benefits for the business and its patrons, this with no apparent detriment to the surrounding area.” At the time of report writing, Staff is unaware of any concerns from the public.

## Conclusion

As this proposal will likely result in one to two vendors on the premise on a regular basis, staff does not anticipate that the addition of food carts will greatly increase traffic to and from the site. Staff also notes that there will be no increase in capacity for the tavern, nor outdoor amplified sound after 10:00 p.m. in the permitted outdoor eating area.

Given these considerations and listed conditions of approval, staff believes that the request for free standing vending on the property at 2609 East Washington Avenue can be found to meet the Conditional Use Approval Standards and recommends that it be approved by the Plan Commission. If approved, the Plan Commission retains continuing jurisdiction over this conditional use, meaning that should complaints be filed, the Plan Commission could take further action on this conditional use as allowed in MGO §28.183(9)(d).

## Recommendation

### Planning Division Recommendation (Contact Sydney Prusak, (608) 243-0554)

The Planning Division recommends that the Plan Commission find that the approval standards for Conditional Uses are met and **approve** the for free-standing vending within 200 feet of a residential use on a property zoned CC-T (Commercial Corridor - Transitional) District at 2609 E Washington Avenue. These requests are subject to the input at the public hearing and the conditions recommended by the reviewing agencies.

### Recommended Conditions of Approval

|                                          |
|------------------------------------------|
| Major/Non-Standard Conditions are Shaded |
|------------------------------------------|

**Planning Division** (Contact Sydney Prusak, 243-0554)

1. Approval for free-standing vending on this site does not modify the approved tavern and outdoor eating area conditions of approval.
2. No additional outdoor amplified sound (from music, televisions, etc.) shall be allowed in the parking lot as part of this conditional use.
3. The applicant shall submit a revised site plan with more detail on the exact location of each free-standing vendor, demonstrating the ability to have the maximum of five (5) carts total, to be approved by Planning, Zoning, Traffic Engineering, and the Fire Department. Staff encourages the applicant to cluster the carts and located them as far from dwelling units as practical.

**Zoning Administrator** (Contact Jacob Moskowitz, 266-4560)

4. Free-standing vending shall be limited to the highlighted areas of the site plan. Use of the entire parking lot for free-standing vending for special events requires a temporary use permit approval.

5. The free-standing vending operation shall follow Supplemental Regulations Section 28.151 for Free-Standing Vending.

**Traffic Engineering Division** (Contact Sean Malloy, 266-5987)

6. The applicant shall provide a separate plan for each cart placement scenario; the plan shall specify the location and number of carts and provide a 5 foot wide, ADA compliant walkway to the service window of the proposed carts.

**Fire Department** (Contact Bill Sullivan, 261-9658)

7. The use of propane within 10-ft of a being would not be allowed. Provide dimensions from the carts to the buildings and information on the source for cooking & heating.