

Decision of the City of Madison Board of Public Works – Privilege in Streets Appeal, heard April 8, 2026.

Decision

The City of Madison Board of Public Works (“BPW”, or “The Board”) heard an appeal by the Social Justice Center (“SJC”) of the Director of the City of Madison’s Community and Economic Development Department’s, or their designee’s (“The Director”) denial of the SJC’s application for a Privilege in Streets pursuant to Madison General Ordinances (“MGO”) Sec. 10.31(2)(b) (Legistar File No. 92558). Following this hearing, the Board has affirmed the determination of The Director in its entirety. Under the ordinance, the Board is required to issue a written decision within twenty days of the hearing.

Factual Background

On September 17, 2025, the Social Justice Center, located at 1202 Williamson Street, filed an application for a Privilege in Streets at that location pursuant to MGO Sec. 10.31(2)(a). This application contained three parts: 1) three (3) benches, 2) art, and 3) little free library/food pantry.

On January 27, 2026, The Director, Matthew Mikolajewski, issued a determination regarding that application. That determination allowed for the art to remain, subject to the fees and insurance requirements of MGO 10.31(3). The three benches and little free library/food pantry were ordered to be removed and their application denied. In that determination, the Director pointed to a number of factors underlying his decision. He cited the complaints made by neighbors of the SJC building as well as the Marquette Neighborhood Association concerning obstruction of the sidewalk, trash, and disorderly behavior by persons that were making use of these items. He also cited the 212 calls for service the Madison Police Department had received from that location in 2025 for similar reasons. Regarding the food pantry specifically, The Director pointed to the lack of oversight related to food safety and pest control, as well as documented instances of the food pantry being used to store other items such as alcohol or waste.

On February 26, 2026, the Social Justice Center submitted a letter to The Director initiating an appeal of his determination under MGO 10.31(2)(b). That letter detailed the history of these items and their relationship to the mission of the SJC. The SJC asserted that the concerns articulated by the Director in his determination were unfounded. The SJC argued that their ability to meet the requirements of MGO 10.31 should result in the approval of their application in its entirety.

Following the receipt of the SJC’s request for an appeal, the Board scheduled an appeal hearing for April 8, 2026.

The Appeal Hearing

Hearing of the appeal consisted of testimony from witnesses called by the City and the Social Justice Center. Following their testimony, each party had the opportunity to deliver a closing statement. The Board then entered into closed session for deliberation.

The City called the Director of the Economic Development Division, Matt Mikolajewski, Captain Kipp Hartman of the Madison Police Department, Matt Tucker, the Director of the Building Inspection Division, and Bonnie Armstrong, the Director of the Environmental Health Division of Public Health Madison and Dane County.

The City's Witnesses

Mr. Mikolajewski's testimony covered the application process for a Privilege in Streets. He stated that the City frequently works with potential applicants when an unpermitted encroachment is discovered. Individuals may choose to remove items that are unlikely to have a privilege granted from the City. In his recollection, the City has not denied a privilege application in the past ten years but has not received an application that presented the same behavioral issues as the present one. Mr. Mikolajewski restated many of the elements of his written determination, summarizing the complaints of sidewalk obstruction, disorderly behavior, drug use, and waste accumulating in the area. He stated that it was his determination that some of these issues could be attributed to the benches and food pantry.

Captain Hartman provided testimony regarding the Madison Police Department's responses to issues at the SJC's address. He stated that the 212 calls for service in 2025 exceeded any other location in the vicinity. He noted that a death had occurred at the location on February 12, 2025. Captain Hartman provided photographs of the location, including one of the food pantry that depicted drug paraphernalia located in the structure. Captain Hartman opined that removing the benches and food pantry could reduce some of the behavioral issues in the area, although he could not state to what degree and did not believe they would be eliminated.

Mr. Tucker's testimony was brief. In it, he stated that while safety concerns for a Privilege in Streets are scrutinized by the Building Inspection Division, they typically look at the potential for the structure to directly impact safety (collapse of an overhang, deterioration of a wall, etc.). His department does not have the expertise to analyze a structure's impact on behavioral problems.

Ms. Armstrong's testimony was also brief. She stated that complaints of urination and defecation had been received by her department in 2025, with staff observing human waste at times, but that no new observations had been made by her staff in 2026.

The Social Justice Center's Witnesses

The Social Justice Center called two witnesses, Brenda Konkel, the SJC's Treasurer and a member of its Board of Directors, and Kyle Wienke, the President of the SJC.

Ms. Konkel stated that the items, specifically the benches and food pantry, provided benefits to Madison's unhoused population that were needed and not easily replaced. She stated that removing these objects would be costly for the SJC and would detract from its mission. Ms. Konkel questioned the

Director's attribution of the behavioral issues in this location to these items. She argued that, should these items be moved onto private property, there was no basis to believe that the behavioral issues would be reduced. Ms. Konkel pointed to the wide terrace as a potential factor in these problems, as it provides a convenient gathering space for people. This could explain why other little free libraries had not generated similar issues.

Mr. Wienke echoed many of Ms. Konkel's points. Mr. Wienke added that the location of these items in the right of way provided the City with tools to address these problems that it would not otherwise have if they were located on private property.

The Analysis of the Board

The Board considered the written materials submitted to it (the SJC's application, the Director's determination/denial, and the SJC's appeal) as well as the testimony presented at the hearing. The Board finds that the primary basis for the Director's determination is the behavioral problems located at the address where the SJC wishes to continue placing art, benches, and a food pantry in the City's right-of-way. The Board finds that the Director and City have presented a factual basis for this concern and have connected it to the benches and food pantry. This basis is found most directly through Captain Hartman's testimony of the elevated calls for service at the location, police contacts and arrests related to disorderly conduct, drug possession, and other offenses, and the photographs depicting drug paraphernalia in the food pantry. Mr. Mikolajewski relayed concerns from neighbors that provided additional support for this finding, as did Ms. Armstrong, who testified that human waste had previously been found at the location.

The Board finds that the SJC's contention that removal of these objects will not abate the issues is plausible. However, even accepting that as true, the Board finds that the Director is not required to show that the public interest will be furthered by a denial before denying an application. Stated differently, if the SJC had applied for a privilege prior to the placement of these objects, the Director would not be required to show that they would present a harm to the public before denying the application. Rather, the law governing a Privilege in Streets provides the City with wide discretion to grant or deny an application so long as a rational basis exists for the decision. In this case, the Director's determination is based on documented harms related to the benches and food pantry identified in the application. Further, the Board finds that the existence of these items likely contributes to the waste present in the area, obstruction of the sidewalk, and increased calls for service. The Board finds that the removal of these objects may reduce calls for service and is likely to reduce sidewalk obstruction. The spanning of the sidewalk by the resources of the SJC and the benches and food pantry likely contribute to the obstruction and cutting that span will likely reduce it. That is sufficient for the Board to find that a rational basis for the Director's determination exists.

The Board has affirmed the determination of the Director in its entirety.