



# City of Madison

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

## Master

**File Number: 29476**

**File ID:** 29476

**File Type:** Resolution

**Status:** Report of Officer

**Version:** 2

**Reference:**

**Controlling Body:** PLAN  
COMMISSION

**File Created Date :** 03/12/2013

**File Name:** 10098 Lease - Community Gardens - Brittingham  
Park

**Final Action:**

**Title:** Authorizing the Mayor and City Clerk to execute a lease with Community Action Coalition of South Central Wisconsin, Inc. for a portion of Brittingham Park located at 801 West Washington Avenue for use as community gardens.

**Notes:** Originally introduced from the floor, by title only.

**CC Agenda Date:** 03/19/2013

**Agenda Number:** 80.

**Sponsors:** Sue Ellingson, Joseph R. Clausius, Mark Clear and Satya V. Rhodes-Conway

**Effective Date:**

**Attachments:** VERSION 1 FILE ID #29476  
Master03-Apr-2013-10-27-53.pdf, Garden Storage Bench Info (Hyperlink), 10098 Lease Exhibit A page 1.pdf, 10098 Lease Exhibit A page 2 .pdf, 10098 Exhibit B - Brittingham Garden Resolution.pdf, Ellingson comments\_04-07-13.pdf, Brittingham CG letter for Neighborhood Alders.pdf, Mayor's Office Memo\_04-08-13.pdf, Rhodes-Conway comments\_04-08-13.pdf, Rhodes-Conway Comments to BPC.pdf, DRAFT - REVISED EXHIBIT B (4-10-13).pdf

**Enactment Number:**

**Author:** Heidi J. Fischer, Real Estate Agent

**Hearing Date:**

**Entered by:** afreedman@cityofmadison.com

**Published Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Economic Development Division	03/19/2013	Referred for Introduction				
	<b>Action Text:</b>		This Resolution was Referred for Introduction				
	<b>Notes:</b>	Board of Park Commissioners, Plan Commission.					
1	COMMON COUNCIL	03/19/2013	Referred	BOARD OF PARK COMMISSIONER S		04/10/2013	
	<b>Action Text:</b>	This Resolution was Referred to the BOARD OF PARK COMMISSIONERS					
	<b>Notes:</b>	Additional referral to Plan Commission.					

1	BOARD OF PARK COMMISSIONERS	03/20/2013	Referred	PLAN COMMISSION	04/08/2013	
	<b>Action Text:</b>	This Resolution was Referred to the PLAN COMMISSION				
	<b>Notes:</b>					
2	PLAN COMMISSION	04/08/2013	Return to Lead with the Recommendation for Approval	BOARD OF PARK COMMISSIONER S	04/10/2013	Pass
	<b>Action Text:</b>	A motion was made by Sundquist, seconded by Rummel, to Return to Lead with the Recommendation for Approval to the BOARD OF PARK COMMISSIONERS. The motion passed by voice vote/other.				
	<b>Notes:</b>	On a motion by Sundquist, seconded by Ald. Rummel, the Plan Commission recommended approval of this resolution without the conditions contained in Exhibit B. The motion to recommend approval passed by voice vote/other.				
2	BOARD OF PARK COMMISSIONERS	04/10/2013	RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER			Pass
	<b>Action Text:</b>	A motion was made by Clear, seconded by Leopold, to RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER. The Park Commission recommends that the conditions in Exhibit B be removed. The motion passed by voice vote/other.				
	<b>Notes:</b>	A motion was made by Clear, seconded by Leopold, to RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER. The Park Commission recommends that the conditions in Exhibit B be removed. The motion passed by voice vote/other.				
2	COMMON COUNCIL	04/16/2013				

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**Text of Legislative File 29476**

**Fiscal Note**

One-time \$200 Administrative Fee to be deposited into Account No. GN01-78220. Annual Rent of \$1.00 to be deposited into Account No. GN01-78220.

**Title**

Authorizing the Mayor and City Clerk to execute a lease with Community Action Coalition of South Central Wisconsin, Inc. for a portion of Brittingham Park located at 801 West Washington Avenue for use as community gardens.

**Body**

WHEREAS, Community Action Coalition for South Central Wisconsin, Inc. ("CAC") desires to lease from the City of Madison a portion of Brittingham Park, located at 801 West Washington Avenue for community gardening purposes; and

WHEREAS, Parks Division staff have reviewed such request and recommend leasing an approximately ¼-acre parcel of land within Brittingham Park to CAC; and

WHEREAS, Parks Division and Office of Real Estate staff have negotiated the terms and conditions of a lease with CAC, and the lease has been reviewed and approved by the City Attorney's Office.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute a lease with Community Action Coalition for South Central Wisconsin, Inc. ("CAC") for an approximately ¼-acre parcel of land within Brittingham Park, located at 801 West Washington Avenue and described below and depicted on attached Exhibit A (the "Leased Premises"), subject to the following terms and conditions:

1. The term of the lease shall be 5 years commencing as of January 1, 2013 and expiring on December 31, 2017. Thereafter, the lease term will automatically continue for

successive terms of one year each until terminated by either party. The City shall have the right to terminate in the event of a default by CAC upon 30 days notice or, at its sole option upon 90 days notice. CAC shall have the right to terminate, at its sole option, upon 60 days notice.

2. CAC shall pay to the City a one-time administrative fee of \$200 and annual rent of \$1.00.
3. The Leased Premises are to be used solely for community gardening purposes. CAC shall have the right to sublease the individual garden plots within the Leased Premises to the public for non-commercial use only.
4. CAC shall be liable to and shall agree to indemnify, defend and hold harmless the City, and its 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 City or its 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 CAC or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.
5. CAC shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence. The policy or policies shall name the City as an additional insured.
6. The Lease shall be subject to the following special conditions:
  - a. CAC shall be allowed vehicular access to the Leased Premises via the bikepath from the intersection of Main Street and Brittingham Place up to three times per year; alternative routes and timeframes shall be approved by the City Park Superintendent.
  - b. CAC shall utilize existing parking locations on the street or in the park parking lot; no other areas are approved for parking of vehicles. Notwithstanding the foregoing, CAC's vehicles may be temporarily parked at the Leased Premises as identified above for loading and unloading materials; pathways shall remain unobstructed during these times.
  - c. No permanent improvements are to be placed on the Leased Premises by CAC or its sublessees, with the exception that the following shall be allowed: (1) facilities for water service shall be permitted at CAC's sole cost and expense, subject to the City's prior written approval of plans and specifications therefore; (2) trellises shall be permitted provided they are uniform in height and material; and (3) raised garden beds approximately 24" in height shall be permitted. Such other improvements as may be requested by CAC from time to time shall be permitted at CAC's sole cost and expense, subject to the City Park Superintendent's prior written approval of plans and specifications.
  - d. CAC shall be solely responsible for all water, sewer, stormwater and any other utility charges billed to the Leased Premises.

- e. Any chemical agent, insecticide, fertilizer, or other additive proposed to be used by CAC or its sublessees must meet or exceed all federal, State, and local laws, regulations guidelines, and limitations (including prohibitions) for its use. The City reserves the right to restrict or ban the use of any chemical agent, insecticide, fertilizer or additive on the Leased Premises.
  - f. CAC agrees to remove all garden refuse (i.e., stakes, flags, debris, etc.) and to mow and/or remove all dead plant material from the Leased Premises after the growing season, but no later than November 30 of each year this Lease is in effect. Notwithstanding the foregoing, during the first year of the Lease CAC shall not be required to mow perennial or biennial plants after the growing season but rather may mulch or cover such plants so that they may be carried over into the next growing season. The City reserves the right, in its sole discretion, to disallow this practice at any time after the first year of the Lease upon written notice to CAC.
  - g. The Lessee shall be permitted to erect upon the Leased Premises up to two garden storage benches for storage of gardening tools as well as to provide a seating area at the garden. Such garden storage bench shall be consistent with the "Excellent & Easy Garden Storage Bench" as shown at <http://www.instructables.com/id/Excellent-Easy-Garden-Storage-Bench> or as approved by the City Park Superintendent. The City is not responsible for any damage to or the replacement of the garden storage benches.
  - h. CAC shall be permitted to place compost bins at a location designated by the City Park Superintendent. The type of bins to be used shall be subject to the City Park Superintendent's prior written approval.
  - i. No trees or shrubs shall be trimmed, removed or otherwise disturbed without the express written consent of the City Park Superintendent.
  - j. CAC agrees to hold the City harmless for any disruption to CAC's use of the Leased Premises and for any damages to CAC's plantings or other personal property on the Leased Premises which may result from work by the City or its agents related to public improvements or facilities, mowing within or adjacent to the Leased Premises, or storm water flooding or overflow.
  - k. Prior to commencing any work, CAC shall contact Diggers Hotline to identify the locations of any underground utilities within the Leased Premises. The garden area shall be reduced as necessary to avoid conflict with any identified utility facilities.
7. In addition to the above, the Alder has requested that the conditions shown in Exhibit B, which are unique to this location, be included as special conditions in the lease.
8. Upon the expiration or termination of the Lease, CAC shall remove all garden waste from the Leased Premises and restore the Leased Premises to a condition equivalent to that which existed prior to the date that CAC first occupied the Leased Premises by cultivating and seeding the soil with grass seed. Restoration shall be accomplished within sixty (60) days of expiration or termination of this Lease, except as may be adjusted by the City to allow for winter conditions. The City may waive or alter this removal and restoration requirement if, at its sole discretion, it so chooses.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to sign any and all documents that may be required to accomplish the purpose of this resolution.

Legal Description of the Leased Premises:

An approximately ¼-acre parcel of land located within a larger parcel of land commonly known as Brittingham Park, located in the Southwest ¼ of Section 23, Town 7 North, Range 9 East, City of Madison, Dane County, Wisconsin, said larger parcel being more particularly described as follows:

Part of the South ½ of said Section 23, T7N, R9E, described as follows: Beginning at the intersection of the Southeasterly line of West Washington Avenue and the Easterly line of West Shore Drive; thence Southerly along the Easterly line of West Shore Drive, 1170 feet, more or less, to the South line of Section 23; thence Easterly along said Section line, 8 feet, more or less, to the shoreline of Monona Bay; thence Northerly, Easterly and Southerly along said shoreline 3000 feet, more or less, to a line S00°00'E from the intersection of the Southwesterly line of South Brittingham Place and the Southeasterly line of West Brittingham Place; thence N00°00", 60 feet, more or less, to said intersection; thence Northwesterly 1020 feet along said Southwesterly line of South Brittingham Place and said line extended to the Northwesterly line of West Main Street; thence Southwesterly along the Southwesterly extension of the Northwesterly line of West Main Street, 65 feet, more or less, to the centerline of vacated West Main Street (pursuant to Volume 357 of Miscellaneous, Page 300, Document No. 1018329); thence along said centerline Westerly 285 feet, more or less, and Southwesterly 300 feet, more or less, to the Southeasterly line of West Washington Avenue; thence along the Southeasterly line of West Washington Avenue, 650 feet, more or less, to the point of beginning.