
Business Plan and Proposed Permit Agreement

Pontoon Porch, LLC

Submitted by Joseph W. Shulla



Summary

The vast majority of Lake Monona's shoreline is occupied by private residential properties. This fact substantially limits lake access for the general public. The citizens of Madison and its surrounding cities deserve an affordable and informal way to enjoy one of our city's lakes. The Pontoon Porch, LLC provides a straightforward solution. The Pontoon Porch, LLC offers individuals with limited physical and/or financial abilities to experience Lake Monona. Appealing to a diverse demographic, the Pontoon Porch, LLC markets to a wide array of community segments including both residential and vacationing families, local and visiting businesses, assisted living communities, non-profit organizations, companies, summer camps, and schools.

In the past five years, hundreds of boat outings have been scheduled on the Pontoon Porch for groups as varied as the Girls Scouts of America, Boys and Girls Club, UW Health, St. James School, American Family Insurance, the Black Hawk Church and the UW Alumni Association. In addition, six weddings and eight charity events scheduled outings. Pontoon Porch, LLC has been contacted by Bravo Network, Wedding Planner Magazine, and Madison Clean Lakes Magazines. Closer to home, the Pontoon Porch was featured in the Isthmus and other local papers. The bottom line is that the Pontoon Porch is both popular with the people of Madison and recognized as an asset to the community.

We at the Pontoon Porch, LLC want to obtain an annual permit to load and unload guests from the Olin Park piers. We hope that this business plan is the first step toward accomplishing that goal.

Business Profile

The Pontoon Porch is a double-decker pontoon boat with a screened-in porch and enough space to accommodate up to 30 guests. The boat includes a built-in gas grill, a swimming or fishing hole with a Plexiglas cover, a sound system, a TV to watch the Badger game, and WiFi access. The boat also includes a bathroom with a sink and toilet and is wheelchair accessible. Guests can rent the Pontoon Porch for a two-to-three hour outing. An experienced and qualified driver then transports the guests to a pre-selected spot on Lake Monona where guests can swim, fish and play. Guests are responsible for bringing their own food and drinks.

The Pontoon Porch operates up to seven days a week during the season and launches up to three times a day. The number of days per week and times per day the Pontoon Porch is in operation varies depending on the weather and the number of reservations. The hours of operation for the Pontoon Porch are 12:00 PM to 9:45 PM.

Based on Pontoon Porch's tour schedule, the maximum number of departures from the Olin-Turville Park piers for the 2013 season would be 456, assuming three tours a day, every day, from June 10, 2013 to October 31, 2013. During the peak months – June, July,

and August – we anticipate two launches per weekday and three launches per day on weekend days. The frequency of launches is slower earlier and later in the season.

Renting the Pontoon Porch is affordable. Guests can rent the Pontoon Porch for a two hour outing for \$450 or for a three hour outing for \$650. With a full boat, this breaks down to under \$10 per person per hour!

Proposed Permit Conditions

We respectfully request that the City Parks Commission do two things: (1) grant the Pontoon Porch, LLC a permit to use the Olin Park piers as a location for loading and unloading guests so as to comply with recently amended Madison General Ordinance § 8.188; and (2) grant the Pontoon Porch, LLC a vending permit to comply with Madison General Ordinance § 8.17.

We are not requesting to lease or rent any real property or to gain control over any of the City's property. For example, we do not intend to ask for guest parking privileges or for the right to post signs in Olin Park. We only ask for a permit which will allow the Pontoon Porch to load and unload guests from the Olin Park piers so as not to violate Madison General Ordinances §§ 8.17 and 8.188.

Risk Management

The safety of patrons and guests is Pontoon Porch, LLC's number one concern. To that end, guests are required to complete an *Operations Orientation* (see below) and sign a "*Pontoon Porch Rental Contract*" (see below) before the boat is cleared for launching. This ensures that guests are aware of the safety features and procedures as well as the rules. Only an experienced and professional operator may operate the boat at any given time. The Pontoon Porch does not launch in severe storms or when winds are above 20 miles per hour. The company provides guests with weather reports before launching via e-mail, text, and telephone calls.

The Pontoon Porch, LLC is insured for \$1,000,000 and has named the City of Madison as an 'additional insured.' To allay any lingering concerns over liability, the Pontoon Porch, LLC is prepared to indemnify the City as part of the overall permit agreement to use Olin Park for pick up and drop off of passengers.

Pontoon Porch, LLC is committed to safe and responsible enjoyment of our public waterways. To that end, we make every effort to ensure that we comply with all applicable State and local laws, regulations, and ordinances regarding boating in Wisconsin and Dane County. The applicable laws and regulations include:

Legal Requirement	Regulation	Pontoon Porch, LLC status
Registration/ Titling Requirements	Wisconsin Stat. §§ 30.51 – 30.539	Boat is titled and registered as required by law.
Required Equipment	Wisconsin Stat. §§ 30.61-30.62	Pontoon Porch has the following equipment which complies with applicable regulations: <ul style="list-style-type: none"> • Personal Flotation Devices; • Sound producing device; • Fire extinguishers; • Navigation lights; • Ventilation system; • Backfire flame arresters; • Battery cover; • Visual distress signals.
Boating Safety Rules	Wisconsin Stat. §§ 30.65 – 30.681 Dane County Ordinance § 72.07 Madison General Ordinance § 14.30	Pontoon Porch, LLC operators and employees are knowledgeable of the safety rules and follow them to the letter.
Waste Disposal	Wisconsin Stat. § 30.71	Pontoon Porch, LLC's practices are in full compliance with the law.
Dane County No Wake Zone Ordinances	Dane County Ordinance §§ 72.08-72.09	Pontoon Porch, LLC operators and employees are knowledgeable of the no wake zone rules and follow them to the letter.
City of Madison Parking Ordinances	Madison General Ordinances §§ 8.18 – 8.188.	Pontoon Porch, LLC operators and employees are knowledgeable of the safety rules and follow them to the letter.

It is important to note that the Pontoon Porch, LLC does not supply or provide food or alcohol to guests. The operators do not allow and constantly monitor underage drinking.

Policies and Procedures

1. **Pontoon Porch** will be operated by one of the appointed **Pontoon Porch** drivers at all times.
2. **Pontoon Porch** requires all renters to provide a \$100 deposit fee to reserve their rental time slot. The deposit fee will be subtracted from the total rental costs at the time of payment. **Pontoon Porch** provides our "*Pontoon Porch LLC Deposit and Cancellation Contract*" to be read, signed and submitted with the deposit fee.

Refunded deposit fees are given when:

- 72 hour notice prior to cancellation is given
 - Weather related occurrences cause mandatory cancellation
3. **Pontoon Porch** relies on weather conditions, if winds are above 20 mph **Pontoon Porch** will not be cleared for launching. If high winds are forecasted during a reserved time slot **Pontoon Porch** would notify the renter and provide reschedule/refund options.
 4. All renters of **Pontoon Porch** must go through a brief *Operations Orientation* that covers essential information including:
 - *Safety Precautions – Zero Tolerance for Reckless and Careless Behaviors*
 - *Safety Equipment Locations – Life Preservers, Fire Extinguisher and First Aid Kit*
 - *General Operations Information - TV, Stereo, Grill, Exit/Entry way locks and Bathroom*
 - *Sound Limitations – Volume Level Limitations/Turn Off All Sound When Approaching Dock*
 - *Return Time of 9:45 – Park Closes at 10pm*
 - *Proper Trash Disposal – Using ONLY the Provided Trash Reciprocals*
 - *Alcohol Consumption – Zero Tolerance for Underage Drinking*
 5. All renters of **Pontoon Porch** are required to sign our "*Pontoon Porch LLC Rental Contract*" authorizing their full understanding of the information covered in the orientation before the boat is cleared for launching.

Guidelines While on Board

The guidelines below are posted on board Pontoon Porch in two locations: in the screened in porch area and in the bathroom

- 1. Be Aware of the Location of all Safety Equipment***
- 2. Engage Only in Responsible Behavior***
- 3. Uphold the Legal Drinking Age of 21 Years of Age***
- 4. Comply with the Noise Level Restrictions Posted on Stereo System***
- 5. Dispose of Trash Only in the Proper Receptacles***
- 6. Swimmers are Responsible for Themselves - Life Preservers are Recommended***
- 7. Refrain for jumping off of second level***
- 8. Turn Off All Sound Equipment When Approaching Dock***
- 9. Be Mindful That All Drivers Work on Gratuity ONLY!!!***

2013 Pontoon Porch LLC Rental Contract

Name _____ Date _____

Address _____ City _____ State _____ Zip _____

Phone No. ____ - ____ - ____ Email _____

Operations Orientation - I have completed the required orientation and agree to observe the listed policies.

Pontoon Porch LLC employs a zero tolerance policy and has the right to evict, without refund any occupant violating the following polices:

- **Safety Precautions** - zero tolerance of reckless & careless behaviors
- **Alcohol Consumption** - zero tolerance for underage drinking
- **Sound Limitations** -zero tolerance for violating the clearly stated volume level limitations
- **Proper Trash Disposal** - zero tolerance for disposal of trash/waste in the water/park

Pontoon Porch LLC conducts the Operation Orientation to ensure renters have a clear understanding of the following:

- **Safety Equipment Locations** - Life Preservers, Fire Extinguisher and Frist Aid Kit
- **General Operations Information** - TV, stereo, lighting, exit/entry way locks and bathroom

Pontoon Porch LLC renters are allowed to enter Lake Monona if they choose. Pontoon Porch LLC is not liable for any incident that may occur while swimming or while exiting/entering the boat from the water.

Pontoon Porch LLC closing time runs congruent with Olin Park closing time. The boat is required to return to the designated return area **no later than 9:45**. Renters are asked to exit the park without delay to sustain the parks 10pm closing time.

I _____ have read and understand the Pontoon Porch LLC Rental Contract. I have completed the Operations Orientation and I gained full knowledge of the enforced zero tolerance policies. I have full understanding as to the locations of safety equipment along with general operational information. I accept that Pontoon Porch LLC is NOT liable for any injury that may occur while on board or in the water surrounding the boat.

**City of Madison
and
Pontoon Porch, LLC
Proposed Permit Agreement**

RE: Access to Olin-Turville Park Piers

This is a Permit Agreement between the City of Madison, a Dane County, Wisconsin municipal corporation (“the City”), and the Pontoon Porch, LLC (the “Operator”).

WITNESSETH:

WHEREAS, the City is the owner of certain park lands in the City of Madison, Dane County, Wisconsin, known as Olin-Turville Park; and

WHEREAS, Pontoon Porch, LLC operates a tour boat on Lake Monona and wishes to use the piers at Olin-Turville Park for the loading and unloading of its passengers; and

WHEREAS, it is in the City’s interest to provide recreational opportunities on Lake Monona to City residents and visitors.

NOW, THEREFORE LET IT BE RESOLVED that in consideration of the mutual covenants expressed herein, the City and Pontoon Porch, LLC mutually agree as follows:

I. PREMISES

The City, for and in consideration of the terms and conditions contained in this Permit Agreement to be performed by Operator, hereby grants to the Operator the non-exclusive use of piers located at the boat launch premises at Olin-Turville Park (“the Park”).

II. ENTIRE AGREEMENT

This Permit Agreement represents the entire agreement between the parties and supersedes any and all oral agreements and negotiations between the parties.

III. ASSIGNABILITY/SUBCONTRACTING

Operator shall not assign nor subcontract any interest or obligation under this Permit Agreement without the City’s written approval. All of the services required by this agreement will be performed by the Operator and its employees.

IV. TERM

The initial term of this Lease Agreement shall be approximately two (2) years beginning upon execution by the Mayor and ending October 31, 2014. During each year of this

agreement and any subsequent renewals, Operator shall have access to launch from the Park piers from April 15 through October 31.

V. CONDITIONS OF RENEWAL

The Permit Agreement shall be renewed for two (2) two-year renewal periods upon the Operator fulfilling all of the following conditions with the City:

- A. During the term of this Agreement, Operator conducts all supplying, fueling, clean-up and sanitary pump-outs at a site on Lake Monona other than Olin-Turville Park.
- B. Operator or its employees are not convicted of law violations related to this Agreement, including but not limited to service of alcohol to underage persons.
- C. Operator follows the initial business plan which reflects the operation of a single Tour Boat launched from the Park piers.

VI. THE CITY'S REPRESENTATIVE

The City's Superintendent of Parks is hereby designated as its official representative for the enforcement of all provisions in this Permit Agreement with full power to represent the City in dealing with Operator in connection with the provisions herein.

VII. OPERATOR'S RESPONSIBILITIES

- A. Store Tour Boat at a site other than the Park.
- B. Service Tour Boat including fueling and refuse operations at a site other than the Park.
- C. Observe all parking regulations at Olin-Turville Park. Assist in notification of Tour Boat customers regarding the prohibition against parking in boat trailer stalls. To the extent possible, encourage guests to park their vehicles on the adjacent streets so as not to congest the parking spaces at the Park.
- D. Ensure that Tour Boat customers observe Park hours; 4:00 AM – 10:00 PM.
- E. Limit docking at Park piers to no more than thirty (30) minutes at any one time and provide that a qualified driver be available at all times to move the Tour Boat if heavy traffic at the Park boat launch so requires.

VIII. OBLIGATIONS OF OPERATOR

- A. *Indemnification.* The Operator shall be liable to and agrees to indemnify, defend and hold harmless the City of Madison and its officers, officials, agents, and employees from and against any and all loss, expense, cost, damage or liability whatsoever

(including reasonable attorney's fees) arising directly or indirectly from any action or omission, arising from or in connection with Operator's performance of this Permit Agreement.

- B. *Insurance.* The Operator shall provide insurance, covering as insured the Operator and naming the City as an additional insured, with no less than the following limits of liability: Bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount.
- C. *Governmental Authority.* The Operator shall become familiar with, and shall comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Operator, its agents and employees. Operator will hold the City harmless with respect to any actions taken by any lawful government authority.
- D. *Attorney's Fees.* Operator agrees to pay or reimburse the City for all reasonable costs, attorney's fees and expenses incurred or paid by the City in enforcing this Agreement should Operator be determined to have defaulted on its obligations under it.
- E. *Permits and Licenses.* Operator shall obtain in a timely manner and keep in good standing, all permits and licenses necessary for operating its business.

IX. NON-COMPLIANCE WITH LEASE AGREEMENT

- A. *Right to Cure.* If the City determines that non-compliance with the requirements of this Agreement has occurred or is occurring, it shall demand immediate correction of such continuing non-compliance in writing and identifying the specific non-compliance. Operator shall then cure such non-compliance within a reasonable time.
- B. *Termination.* The City has the right to terminate this Agreement only if Operator fails to cure within a reasonable time and the City provides 30 days written notice to Operator.

X. AMENDMENT

This Permit Agreement shall be binding on the parties and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties. Any other change in any provision of this Agreement may only be made by written amendment, signed by the authorized agent or agents of the parties.

XI. NO WAIVER

The City and the Operator may not waive any right or remedy under this Agreement unless such waiver is in writing, signed by the authorized agent or agents of the parties and specifying the particular right or remedy waived.

XII. SEVERABILITY

It is mutually agreed that in case any provision of this Permit Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

XIII. NOTICES

All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: Kevin Briski, Superintendent of Parks
City of Madison Parks Division
City-County Building, Suite 104
210 Martin Luther King Jr. Blvd
Madison, WI 53703

FOR THE OPERATOR: Joseph W. Shulla
Pontoon Porch, LLC
626 Piper Drive
Madison, WI 53711

With a copy to: Attorney Tyler Wilkinson
Axley Brynelson, LLP
2 East Mifflin Street, Suite 200
Madison, WI 53703

XIV. STATUS OF LESSEE

The Operator is an independent contractor and not an employee or agent of the City. Any employees or agents of the Operator are not employees of the City of Madison.

XV. THIRD PARTY RIGHTS

This Permit Agreement is intended only to be solely between Pontoon Porch, LLC and the City of Madison. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third parties.

XVI. LAW APPLIED

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts without regard to conflicts of law principles.

XVII. FEES AND PAYMENT

In consideration for access to the Olin-Turville Park piers, the Operator agrees to pay the following amounts to the City:

2013 Season: \$750.00

2014 Season: \$1,000.00

Payment for the 2013 season is due upon execution of this Permit Agreement. Payment for the 2014 season is due May 1, 2014. Fees for subsequent years will be negotiated at a later time to be determined by the parties. A season is April 15 through October 31 of the calendar year.

WITNESS:

PONTOON PORCH, LLC
Operator

By: _____

By: _____

Joseph W. Shulla

Print Witness Name: _____

Date: _____

Date: _____

Joseph W. Shulla is duly authorized by the limited liability company.

CITY OF MADISON, WISCONSIN
a municipal corporation

By: _____

Paul R. Soglin, Mayor

Date: _____

By: _____

Maribeth Witzel-Behl, City Clerk

Date: _____

Approved:

Approved as to Form:

Eric Veum, Risk Manager

Michael P. May, City Attorney

Date: _____

Date: _____